



Department for  
Communities and  
Local Government

23 September 2013

Miss Rebecca Daniels  
K & L Gates LLP  
One New Change  
London  
EC4M 9AF

Our Ref: APP/E5900/A/12/2178920  
Your Ref: SAC/PDT/6009789.00016

Dear Madam,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL BY WORKSPACE GROUP PLC  
POPLAR BUSINESS PARK, PRESTONS ROAD, LONDON E14 9RL  
APPLICATION: REF PA/11/03375**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Mr Chris Frost, BSc(Hons) DipLD FLI CBIol MSB MRTPI who held a public local inquiry on 4 December 2012, 28-30 January and 1 February 2013 into your client's appeal against the decision of the Council of the London Borough of Tower Hamlets ('the Council') to refuse planning permission of an application by Workspace Group PLC for the redevelopment of the Poplar Business Park, Prestons Road, London E14 9RL to provide a mixed use scheme of between 3 and 22 storeys comprising 8104 sqm (GEA) of SME business accommodation (Use Class B1) floorspace, 302 residential units (Use Class C3) with associated parking and landscaping in accordance with application number PA/11/03375, dated 28 October 2011.
2. On 28 July 2012, the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 to Schedule 6 to, the Town and Country Planning Act 1990 because the appeal involves proposals for residential development of over 150 units or on sites of over 5 hectares, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.

### **Inspector's recommendation and summary of the decision**

3. The Inspector recommended that planning permission be granted. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, and his recommendation. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

### **Procedural Matters**

4. In reaching this position the Secretary of State has taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (IR3). The Secretary of State is content that the Environmental Statement complies with the above regulations and that sufficient information has been provided for him to assess the environmental impact of the application.
5. The Secretary of State notes that the Council now takes the view that its second reason for refusing planning permission, in respect of contributions towards education and health infrastructure, should not be defended following a revised offer of financial contributions made by your client in a S106 Planning Obligation (IR4).
6. Following the close of the inquiry the Council adopted its Managing Development Document DPD, and the Secretary of State notes that comments were invited from the main parties and that the Inspector's report was written in light of those comments (IR5). He also notes that your client signed an updated planning obligation reflecting the fact that the Workspace group now owns the freehold of the site (IR6)

### **Policy considerations**

7. In deciding the application, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan comprises the Council's Managing Development Document DPD 2013 along with the London Plan 2011 and the London Borough of Tower Hamlets Core Strategy DPD 2010. The Secretary of State considers that the development plan policies most relevant to the appeal are those set out by the Inspector at IR10 to 15.
8. Other material considerations which the Secretary of State has taken into account include: The National Planning Policy Framework ('the Framework'); Circular 11/95: *The Use of Conditions in Planning Permission*; and the Community Infrastructure Levy (CIL) Regulations (2010 and 2011). The Secretary of State has had regard to the fact that on 28 August 2013 Government opened a new national planning practice guidance web-based resource. However, given that the guidance is currently in test mode and for public comment, he has attributed it limited weight.

## **Main issues**

9. The Secretary of State considers that the main issue in this case is whether either of the amounts of affordable housing that are offered are adequate and, if not, whether there are any other material considerations that outweigh development plan policy and justify the grant of planning permission (IR80).

## **The Development Plan**

10. The Secretary of State agrees with the Inspector that, in order to comply with the overall thrust of the relevant policies in the development plan, this development should be able to demonstrate that it provides the maximum reasonable amount of affordable housing (IR81 & 82).

## **The Framework**

11. The Secretary of State notes that the Council does not have a 5 year supply of housing land that is available for development and agrees with the Inspector that this housing scheme should be considered in the context of the presumption in favour of sustainable development (IR 83 & 84).

## **The Affordable Housing Offers**

12. The Secretary of State notes your client's offers of affordable housing provision, based on floor area, which consist of a base figure of 12.5% and an alternative level of 20%, and other issues relating to the affordable housing offers as described in IR85 to 87.

## **Method of Procurement**

13. For the reasons described at IR88 to 92, the Secretary of State agrees with the Inspector's conclusion on this aspect of the Council's case. He therefore likewise considers that it would be unrealistic to expect the development to deliver an affordable housing provision of 30.4%, as suggested by the Council, as this quantum relies on the use of a method of procurement that cannot be guaranteed and would be unlikely to be pursued (IR93).

## **Residential Values**

14. The Secretary of State accepts that the Council's estimate of residential values are reasonable and could be expected to be achieved (IR94 to 104). He notes that achieving a value of £530psf would generate £2.1m above your client's estimate, and that this in turn would enable a higher level of affordable housing to be provided that would be in excess of 12.5% (IR105). The Secretary of State further notes that parties have not sought to address the question of what level of affordable housing provision a further £2.1m would be able to support, however the Appellant's main valuation witness did calculate that a saving of about £3.9m on procurement would equate to the provision of affordable housing space of 20% (IR106).

### Other Items, Matters and Material Considerations

15. For the reasons described at IR 107 to 110, the Secretary of State accepts the Inspector's conclusion that no further adjustment of the affordable housing levels has been shown to be justified. He agrees with the Inspector's reasoning and conclusions on the issue of other matters (IR111 & 112), and other material considerations (IR123).

### Planning Conditions and Planning Obligations

16. The Secretary of State has had regard to the proposed conditions set out at Annex B of the Inspector's Report and to the planning obligations. He has also taken account of the Inspector's comments in IR120-122 and 113-119 on conditions and on the obligations, and to Circular 11/95 and the CIL Regulations 2010 as amended. He is satisfied that the conditions are reasonable and necessary (save Condition 35), and meet the tests of Circular 11/95. He is also satisfied that the planning obligations are directly related to the development and are fairly and reasonably related to it in scale and kind, and is CIL-compliant.

### Overall Conclusions

17. The Secretary of State agrees with the Inspector that the appeal can only be decided by reference to what is on offer. He concludes that there is a pressing need for affordable housing in the area, which the development plan policies strongly advocate and that this development should be expected to provide. Your client has offered an Obligation which indicates two levels of affordable housing provision: 12.5% and 20%, and whilst neither meets the Council's requirements, the Secretary of State agrees with the Inspector that the provisions of the London Plan do permit flexibility to be applied where a requirement based on the policy aspiration would demonstrably render the scheme as a whole unviable, and thus undeliverable. The Secretary of State is satisfied that the development could bear a level in excess of 12.5% affordable housing. Whilst at 20% there would be concerns on your client's part as to viability, the Secretary of State agrees with the Inspector that there is no certainty that these concerns are of such an order as to mean that the development would not be delivered in the reasonably foreseeable future. He therefore likewise concludes that there is good reason not to place weight on your client's Obligation to offer 12.5% affordable housing and a sound and reasonable basis to attach weight to that proposing 20%. Therefore, for the reasons given by the Inspector at IR124-131, the Secretary of State concludes that planning permission should be granted, subject to conditions, on the basis of the 20% affordable housing provision and that such provision would meet the requirements of CIL Reg 122 and the policy of the NPPF at paragraph 204.

### Formal Decision

18. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants planning permission for residential development a mixed use scheme of between 3 and 22 storeys comprising 8104 sqm (GEA) of SME business accommodation (Use Class B1) floorspace, 302 residential units (Use Class C3) with associated

parking and landscaping in accordance with application number PA/11/03375, dated 28 October 2011, subject to the conditions listed in the Annex of this letter.

19. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.
20. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.
21. This letter serves as the Secretary of State's statement under regulation 21(2) of the Town and Country (Environmental Impact Assessment) (England and Wales) Regulations 1999.

**Right to challenge the decision**

22. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.
23. A copy of this letter has been sent to the Council of the London Borough of Tower Hamlets. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

**Lindsay Speed**

Authorised by Secretary of State to sign in that behalf

## CONDITIONS

- 1 The development allowed by this permission must begin within three years from the date of this decision.
- 2 Details of the construction phasing plan shall be submitted to and approved in writing by the Local Planning Authority prior to commencement of any works on site. The phasing of the development shall be implemented in accordance with the approved construction phasing plans.
- 3 Notwithstanding the plans hereby approved as set out in Condition 34, details and samples of all facing materials to buildings within each Phase, shall be submitted to and approved in writing by the Local Planning Authority prior to any superstructure works to the phase which it relates to is commenced on site. The samples and details shall include:

Brickwork (including brick panels and mortar courses for each building);

Cladding materials;

Colour render panels;

window treatment (including sections and reveals; obscure glazing details to Block C1);

balustrading treatment (including sections);

louvers/timber treatment to refuse enclosures;

any other materials to be used.

The development shall be carried out strictly in accordance with the details so approved and maintained as such thereafter.
- 4 No development shall commence until a scheme to prevent the infiltration of surface water drainage into the ground is submitted to, and approved in writing by, the Local Planning Authority. The development shall be carried out

thereafter in accordance with the approved scheme unless otherwise agreed in writing by the Local Planning Authority.

- 5 No development shall commence unless and until the following assessment has been submitted to and approved in writing by the Local Planning Authority.

a) A preliminary risk assessment which has identified:

i) all previous uses

ii) potential contaminants associated with those uses

iii) a conceptual model of the site indicating sources, pathway receptors

iv) potentially unacceptable risks arising from contamination at the site

b) A Site investigation scheme, based on a) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.

c) The results of the site investigation and detailed risk assessment are referred to in b) and, based on these, an option appraisal and remediation strategy giving full details of the remediation measures required is to be undertaken.

d) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in c) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

e) If, during development, contamination not previously identified is found to be present at the site then no further development shall be carried out until the developer has submitted and obtained written approval from the Local Planning Authority for, a remediation strategy detailing how this unsuspected contamination shall be dealt with. The remediation strategy shall be implemented as approved.

The development shall be carried out strictly in accordance with the investigation and any scheme of remedial works so approved and no change

therefrom shall take place without the prior written consent of the Local Planning Authority.

- 6 Prior to occupation of the development, a verification report demonstrating completion of the works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved, in writing, by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include any plan (a 'long term monitoring and maintenance plan') for longer-term monitoring of pollutant leakages, maintenance and arrangements for contingency action, as identified in the verification plan, and for the reporting of this to the Local Planning Authority. The long-term monitoring and maintenance plan shall be implemented as approved.
- 7 Piling or any other foundation designs using penetrative methods shall not be permitted other than with the written consent of the Local Planning Authority for each Phase of the development, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to groundwater. The development shall be carried out in accordance with the approved details.
- 8 No impact piling shall take place until a piling method statement (detailing the type of piling to be undertaken and the methodology by which such piling will be carried out, including measures to prevent and minimise the potential for damage to subsurface water or sewerage infrastructure, and the programme for the works) has been submitted to and approved in writing by the Local Planning Authority in consultation with relevant water or sewerage undertaker. Any piling must be undertaken in accordance with the terms of the approved piling method statement.
- 9 Development shall not be commenced until Impact studies of the existing water supply infrastructure have been submitted to, and approved in writing by the Local Planning Authority (in consultation with Thames Water). The studies should determine the magnitude of any new additional capacity required in the system and a suitable connection point.
- 10 No development shall commence until the Council (as local planning authority and the highway authority) has approved in writing a scheme of access improvements at the junction of the site access and Prestons Road and to the boundary of the site necessary to serve the development. The development



shall not be occupied thereafter until the approved scheme has been completed and certified in writing as complete by or on behalf of the Council (as local planning authority and highway authority).

- 11 A delivery and servicing plan (DSP) detailing servicing arrangements for each Phase including the exact location, times and frequency shall be submitted to and approved in writing by the Local Planning Authority prior to the first occupation the building within the Phase which it relates to. A final site wide delivery and servicing plan shall be submitted and approved in writing by the Local Planning Authority prior to the first occupation of the last Phase.

The development shall be operated strictly in accordance with the details so approved, shall be maintained as such thereafter and no change thereafter shall take place without the prior written consent of the Local Planning Authority.

- 12 No development shall be commenced on each Phase unless and until details of a construction logistic plan (CLP) that rationalises construction traffic with the aim to avoid peak traffic periods on the road network and reduce the total number of trips made shall be submitted to and approved in writing by the Local Planning Authority.

The construction of the development shall be operated strictly in accordance with the details so approved, shall be maintained thereafter and no change shall take place without the prior written consent of the Local Planning Authority.

- 13 The car-parking spaces (including disabled and allocated affordable parking spaces), motorcycle spaces and cycle spaces as shown on drawing nos. PL-009 Revision A; PL-010 Revision A and PL-011A hereby approved shall be provided in each Phase prior to the first occupation of the buildings within each Phase which it relates to. The parking bays shall be appropriately line-marked and thereafter kept available for the parking of vehicles, motorcycles and bicycles at all times.

- 14 Notwithstanding the plans hereby approved as set out in Condition 34, the site wide details and location of:

a) 20% electric charging points and details of further 20% passive provision (on both the basement level and street level); and

b) at least one car club space

shall be submitted to and approved in writing by the Local Planning Authority prior to superstructure works commence on the first Phase of the development.

The details for each Phase shall be carried out strictly in accordance with the details so approved and maintained as such thereafter.

- 15 A scheme detailing a site wide hard and soft landscaping which is to be implemented in parts at the practical completion of each Phase and which follows the principles of the landscape master plan with reference LS01 Revision 01 shall be submitted to and approved in writing by the Local Planning Authority and in consultation with the City Airport prior to superstructure works commencing on site. The detailed landscaping scheme shall include the following details:

Soft planting: including any grass and turf areas, trees, planters, shrub and herbaceous areas including details of species which would discourages large bird species at both ground level and roof levels;

topographical survey: including earthworks, ground finishes, top soiling with both conserved and imported topsoil(s), levels, drainage and fall in drain types;

hard landscaping: including ground surfaces, kerbs, edges, ridge and flexible pavings, unit paving, furniture, steps, 'visual thread' and if applicable synthetic surfaces for both ground level and roof terrace level;

children play area;

fences and walls;

any signage and information boards;

brown (biodiversity) roof;

green walls;

substation and transformers;

Cycle parking stands/enclosures; and

any other landscaping feature(s) forming part of the scheme.

All landscaping in accordance with the approved scheme shall be completed / planted during the first planting season following practical completion of the each Phase. The landscaping details to be approved shall have an on-going five year maintenance and watering provision. Following planting of any trees or shrubs which die within five years of completion of the development shall be replaced with the same species or an approved alternative and to the satisfaction of the Local Planning Authority.

The development shall be carried out strictly in accordance with the details so approved and shall be maintained as such thereafter.

- 16 The details of site wide wayfinding information shall be submitted to and approved in writing by the Local Planning Authority prior to superstructure works commence on the first Phase of the development. The approved site wide wayfinding information and signage shall be installed and implemented within at each Phase in accordance with the approved details prior to the first occupation of the buildings of the phase it relates to.
- 17 Details of a site wide scheme of lighting shall be submitted to and approved in writing by the Local Planning Authority (in consultation with the City Airport) prior to superstructure works commencing on the first Phase of the development. The details shall include the location and full specification of all lamps; light levels/spill; lamps and support structures.

The approved lighting scheme shall be implemented at each Phase in accordance with the approved details prior the first occupation of the buildings of the phase it relates to.

- 18 Details for the provision of habitat including bat roost and swift boxes to be located on the brown (biodiversity) roofs and suitable locations elsewhere within each Phase with nutrient substrate supporting varied low density cover shall be submitted to and approved by the Local Planning Authority prior to any superstructure works to the phase which it relates to is commenced on site.

The development shall be carried out strictly in accordance with the details so approved and implemented within the first planting season following the

practical completion of the building within each Phase which it relates to, and shall be maintained as such thereafter.

- 19 The 39 wheelchair / wheelchair adaptable units as shown on plans PL-W100; PL-W200; PL-W300; PL-W400; PL-W500; and PL-W600 hereby approved shall be provided in the buildings within each Phase prior to the first occupation of the building which it relates to.
- 20 The residential units hereby approved shall be constructed to the standards for Lifetime Homes Standards.
- 21 Notwithstanding the plans hereby approved as set out in Condition 34, a scheme for sound insulation and noise control measures together with appropriate ventilation details to the residential dwellings within each Phase shall be submitted to and approved in writing by the Local Planning Authority prior to any superstructure works commence on the Phase in which it relates to. The sound insulation and noise control measures shall meet the requirements of the current noise attenuation regulations.

The sound insulation and noise control measures shall be carried out strictly in accordance with the details so approved, shall be implemented prior to the first occupation of the buildings in each Phase which it relates to and shall be maintained as such thereafter.

- 22 For any café/restaurant use ancillary to the uses hereby permitted, details of proposed flues / extraction systems for the unit shall be submitted to and approved in writing by the Local Planning Authority prior to superstructure works commencing on the relevant Phase.

Any filters and parts requiring cleaning or replacement shall be easily accessible.

The flue / extraction systems shall be installed strictly in accordance with the details so approved and shall be regularly maintained and cleaned as such thereafter.

- 23 The dedicated refuse and recycling enclosures within each Phase shall be provided prior to the first occupation of the building which it relates to.

The development shall be carried out strictly in accordance with the details so approved and shall be maintained as such thereafter.

- 24 Prior to first occupation of the residential units within each part of the development hereby approved, the applicant shall submit the Final Code for Sustainable Homes certificates relevant to that part of the development being completed to demonstrate the development achieves a “Level 4” rating which shall be verified by the awarding body.

The sustainable design and construction measures shall be implemented in accordance with the proposals made in the ‘Sustainability Statement dated October 2011’ and retained for so long as the development shall exist except to the extent approved in writing by the Local Planning Authority.

- 25 Prior to first occupation of the non-residential units within each part of the development hereby approved, the applicant shall submit the Final BREEAM certificates relevant to that part of the development being completed to demonstrate the development achieves an “Excellent” rating which shall be verified by the awarding body.

The sustainable design and construction measures shall be implemented in accordance with the proposals made in the ‘Sustainability Statement dated October 2011’ and retained for so long as the development shall exist except to the extent approved in writing by the Local Planning Authority.

- 26 Prior to first occupation of the development hereby approved, the heat network supplying all spaces within the proposed development shall be installed and sized to the space heating and hot water requirements of the development, and shall thereafter serve all spaces of the development.

It shall be supplied with heat from either:

- a) An external district heating system; or
- b) Heat generating plant installed in a single energy centre located within the Poplar Business Park Development and that upon completion of the scheme includes combined heat and power capacity of ~100 kWe.

The heat generating plant will be designed to allow future connection to a future district heating scheme.

The energy efficiency and decentralised energy technologies shall be implemented in accordance with the proposals made in the ‘Energy Strategy

dated October 2011' and retained for so long as the development shall exist unless otherwise approved in writing by the local planning authority.

27 A minimum of 300m<sup>2</sup> of photovoltaic panels (30kWp) shall be installed within the development hereby permitted. The renewable energy technologies shall be implemented in accordance with the proposals made in the 'Energy Strategy dated October 2011' and retained for so long as the development shall exist.

28 No development shall take place until the applicant has secured the implementation of a programme of archaeological works, in accordance with a written scheme of investigation which has been submitted to and approved in writing by the Local Planning Authority.

The detailed proposals shall be in the form of an archaeological project design in accordance with the appropriate English Heritage Guidelines.

29 Details of cranes and/or scaffolding at a higher elevation than the proposed development in each Phase shall be submitted to and approved in writing by the Local Planning Authority (in consultation with London City Airport) prior to superstructure works commencing on each Phase.

30 The highest part of the completed structure shall not exceed 76.64m AOD.

31 Any building and engineering works preparatory to or ancillary to the construction shall take place between the hours of 8:00am and 6:00pm Mondays to Fridays and between the hours of 8:00am and 1:00pm Saturdays only. Any hammer driven piling or impact breaking out of materials carried out in pursuance of this permission shall be carried out between the hours of 10am and 4pm Mondays to Fridays and shall not take place at any time on Saturdays, Sundays or Public Holidays.

32 Prior to any demolition a survey to identify Black Redstarts within the site and a strategy for mitigating impacts thereon shall be submitted to the local planning authority for approval. No demolition shall take place between April to August (inclusive) for any phase without complying with the approved strategy.

33 A waste management plan for each Phase shall be submitted to and approved in writing by the Local Planning Authority prior to any superstructure works commence on the phase it relates to. Such plan shall detail waste and

recycling generated from the development, sufficient provision to store waste and recycling and its pick up arrangements. The plan shall also detail ways to ensure that the refuse/recycling facilities do not provide source of food for wildlife and proper disposal of food wrappers and other rubbish at the site to be provided to prevent the attraction of birds.

The development shall be carried out strictly in accordance with the details and waste management strategy approved and maintained as such thereafter.

- 34 The development hereby approved shall be carried out in accordance with the following approved plans:

SCH-302 REV B, PL-001, PL-002, EL-001, EL-002, EL-003, EL-004, PL-004, PL-005, PL-009A, PL-010A, PL-011A, PL-012A, PL-013A, PL-014A, PL-015A, PL-016A, PL-017A, PL-018A, PL-019A PL-020A, PL-021A, PL-022A, PL-023A, PL-024, PL-025, PL-026, PL-027, PL-028, PL-029, PL-030, PL-031, PL-032, PL-100A, PL-101A, PL-102A, PL-103A, PL-104, PL-105, PL-200, PL-201A, PL-202A, PL-203A, PL-204A, PL-205A, PL-206, PL-300A, PL-301A, PL-302, PL-303, PL-304, PL-305, EL-141, EL-142, EL-143, EL-144, EL-145, EL-146, EL-147, EL-148, SC-151, SC-152, SC-153, SC-154, SC-155, SC-156, SC-157, LS-01, LS-04, LS-05, LS-06, LS-07.

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# **Report to the Secretary of State for Communities and Local Government**

**by Chris Frost BSc(Hons) DipLD FLI CBIol MSB MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Date: 27 August 2013**

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**TOWN AND COUNTRY PLANNING ACT 1990**

**APPEAL BY**

**Workspace Group PLC**

**London Borough of Tower Hamlets**

Inquiry opened on 4 December 2012

Poplar Business Park, Prestons Road, London E14 9RL

File Ref: APP/E5900/A/12/2178920

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## CONTENTS

	Page No.
Procedural Matters	1
The Site and Surroundings	1
The Proposals	2
Planning Policy	2
The Case for the London Borough of Tower Hamlets	4
The Case for Workspace Group PLC	7
Other Matters:	
Written Representations	13
Conditions	13
Section 106 Planning Obligations	15
<b>INSPECTOR'S CONCLUSIONS</b>	<b>17</b>
Main Consideration	17
The Development Plan	17
The Framework	17
Affordable Housing Offer	17
Method of Procurement	18
Residential Values	19
Other Items	22
Other Matters	22
Section 106 Planning Obligations	23
Conditions	24
Other Material Considerations	24
Inspector's Overall Conclusions	24
<b>RECOMMENDATION</b>	<b>26</b>
Appearances	27
Appendix A Abbreviations	28
Appendix B Suggested Conditions	29
Documents List	44
Plans and Schedules (See Documents CD/B1/16-23)	

**File Ref: APP/E5900/A/12/2178920**

**Poplar Business Park, Prestons Road, London E14 9RL**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Workspace Group PLC against the decision of the Council of the London Borough of Tower Hamlets.
- The application Ref: PA/11/03375, dated 28 October 2011, was refused by notice dated 11 June 2012.
- The development proposed is the redevelopment of the site to provide a mixed use scheme of between 3 and 22 storeys comprising 8104 sqm (GEA) of SME business accommodation (Use Class B1) floorspace, 302 residential units (Use Class C3) with associated parking and landscaping.

**Summary of Recommendation: That the appeal is allowed.**

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**Procedural Matters**

1. The Inquiry sat on 4 December 2012, 28, 29 & 30 January 2013 and 1 February 2013. Site visits were undertaken on 4 December 2012 and 31 January 2013.
2. The application documents are found at Documents CD/B1/01 – 23. This includes the plans and other accompanying documentation.
3. I have had regard to the Environmental Statement submitted with the application under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (Documents CD/B1/12 (non-technical summary) & CD/B1/13 (Volumes 1, 2, 3, 4A, 4B, & 4C). The submitted statement complies with the requirements of the Regulations.
4. The Council gave two reasons for refusing planning permission. The second of these relates to the Council's view that the scheme failed to make adequate contributions towards education and health infrastructure. However, the Appellant has since made a revised offer of financial contributions in a S106 Planning Obligation and the Council now takes the view that its second reason for refusal should not be defended. I will return to this as a matter in my conclusions.
5. Following the close of the Inquiry, on 17 April 2013 the Council adopted its Managing Development Document DPD (Document CD/D3/02A). Subsequently, comments were invited from the main parties and these are found at Documents TH/BE/P Appx 3 and WS/JC/P Appx 1. This report is written in the light of those comments.
6. On 17 May 2013 the Appellant signed an updated planning obligation reflecting the fact that the Workspace Group (WSG) now owns the freehold of the site (Document CD/J/07). I have taken account of this in making my recommendation.

**The Site and Surroundings**

7. The site is currently occupied by a modern and functioning low rise business park comprising 3 blocks of metal clad buildings (Aerial photograph at Document WS/JAC/P p.12). This is bounded by properties along Poplar High Street to the north, while to the south the site is bounded by a modern

highway known as Aspen Way. The Docklands Light Railway (DLR) is carried above this southern boundary on a concrete viaduct. To the east is an existing residential tower (Wharfside Point) that fronts onto Cotton Street and its grade separated roundabout junction with Aspen Way. To the west is a DLR depot. To the south of Aspen Way are tower blocks, the River Thames, Poplar Dock, West India Dock and Canary Wharf, with its array of some of the tallest buildings in London.

## The Proposals

8. Details of the proposed development are set out in the Statement of Common Ground (SoCG, Document CD/F/01 Section 4). Further details including visual representations relating to the design of the scheme can be found at Document WS/JCA/P, p.28-p.39. The development would comprise 3 main towers arranged around 2 landscaped squares. The easternmost of these would have direct public access. The other would be a mainly residential courtyard. The business units would be at the lower levels facing onto the squares with the residential accommodation within the towers above. There would be direct public access at ground level from the eastern square through to Poplar High Street. It is anticipated that eventually there would also be a link through to a new pedestrian route under Aspen Way towards the Thames, Docks and Canary Wharf.

## Planning Policy

9. On 17 April 2013 the Council's Managing Development Document DPD was adopted (Document CD/D3/02A) and accordingly this now forms part of the development plan, along with the London Plan 2011 (Document CD/D4/01) and the LBTH Core Strategy DPD 2010 (Document CD/D1/02). The Unitary Development Plan 1998 (Document CD/D1/01) and the Interim Development Guidance 2007 (Document CD/D2/02) are now superseded and no longer form part of the development plan (Document TH/BE/P Appx 3).
10. The principal policies which are of concern to the Council are: policies 3.11, 3.12 & 3.13 of the London Plan (Document CD/D4/01); policy SP02 of the Core Strategy (Document CD/D1/02); and policy DM3 of the Managing Development Document (Document CD/D3/02A). I consider that these policies are most relevant but a wider overview of the development plan is given in the SoCG (Document CD/F/01).

London Plan (Document CD/D4/01)

11. London Plan policy 3.11 sets affordable housing targets. It seeks to maximise affordable housing provision and ensure an average of at least 13,200 more affordable homes per year in London. 60% of this should be for social rent and 40% for intermediate rent or sale. Priority should be accorded to the provision of affordable family housing. One of the factors to be taken into account in calculating affordable housing targets is: the viability of future development, taking into account future resources as far as possible (policy 3.11 C (f)).
12. London Plan policy 3.12 deals with the negotiation of affordable housing on individual private residential and mixed use schemes. It seeks to achieve the maximum reasonable amount of affordable housing, having regard to a range

of factors. At policy 3.12 B it notes that negotiations should take account of their individual circumstances including development viability, the availability of public subsidy, the implications of phased development including provisions for re-appraising the viability of schemes prior to implementation and other scheme requirements.

13. London Plan policy 3.13 deals with affordable housing thresholds and normally requires affordable housing provision on a site which has capacity to provide 10 or more homes.

London Borough of Tower Hamlets Core Strategy DPD (Document CD/D1/02)

14. Policy SP02 of the Core Strategy seeks to deliver 2,885 new homes per year between 2010 and 2025. One of the main areas of focus is in Poplar. The policy sets an overall strategic target for affordable homes of 50% until 2025 and policy SP02 3 (a) requires 35% - 50% affordable homes on sites providing 10 new residential units or more (subject to viability). The strategic tenure split should be 70% social rented housing and 30% intermediate tenure.

London Borough of Tower Hamlets Managing Development DPD (Document CD/D3/02A)

15. Policy DM3 of the Managing Development Document seeks to maximise affordable housing in accordance with the Council's preferred tenure split (70% social rented and 30% intermediate). The delivery of affordable housing on-site should be maximised. Affordable housing should be built to the same standards and should share the same level of amenities as private housing. A balance of housing types, including family homes, should be provided.

National Planning Policy Framework (the Framework) (Document CD/E/01)

16. Following a period of 12 months from the publication of the Framework the weight to be given to relevant policies in existing plans will be in accord with their consistency with the Framework. My conclusions reflect the situation as it exists after March 2013.
17. At paragraph 47 the Framework sets out the need for authorities to identify sites sufficient to provide five years worth of housing against their housing requirements with an additional buffer of 5%. Paragraph 49 says that housing applications should be considered in the context of the presumption in favour of sustainable development and that relevant policies should not be considered up-to-date in the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.
18. At paragraph 159 (Housing) the Framework requires plans to be prepared that: meet household and population projections; address the need for all types of housing (including affordable housing); and cater for housing demand. Paragraph 173 (Ensuring viability and deliverability) points out that plans should be deliverable and that schemes are not subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened. It warns that pursuing sustainable development requires careful attention to viability and costs in plan-making and decision-taking. It also recognises that development should provide competitive returns to a willing land owner and willing developer to enable development to be deliverable.

## THE CASE FOR THE LONDON BOROUGH OF TOWER HAMLETS

*The material points are:*

### Planning

19. It is acknowledged that the provision of a mixed use scheme on this site would be acceptable and (aside from affordable housing issues) the scheme would be compliant with local and national policies. This includes the details of the proposed design and layout of the site (Document CD/F/01 section 11).
20. The scale of housing need in London is well documented and set out in the London Plan. The Council's target, expressed in the Core Strategy at policy SP02, is that 50% of all housing should be provided as affordable homes with a split of 70% social rent and 30% intermediate tenure. This is underscored in the Managing Development Document 2013 at policy DM3, which states that development will be required to maximise affordable housing in accordance with the Council's tenure split (70% Social/Affordable Rent and 30% Intermediate). In addition, it is considered that LBTH has a particularly high demand for affordable housing when compared with some other London Boroughs (Document TH/JD/P section 5).
21. The Council refused planning permission for two reasons: a) failure to provide requisite levels of affordable housing; and b) inadequate contributions to mitigate the impact of the development on education and health care provision. However, the Council is now satisfied that the S106 Obligation provides for the appropriate financial contributions and does not pursue its second reason for refusal (Document CD/J/02). This leaves affordable housing provision as the only matter in dispute.

### Affordable Housing Issues

22. The Council calculates that this scheme could make a significantly higher contribution to the supply of affordable homes than the 12.5% of floorspace offered by the Appellant. This is because the Appellant cites a build cost of some £83m (Document TH/CB/P para 5.52) whereas the Council contends that these costs can be reduced to some £77m (Document TH/CB/P para 5.52). This difference is of great importance as it represents the difference between providing 12.5% affordable housing as opposed to the 30.4% calculated by the Council (Document TH/CB/UP).
23. The resultant shortfall in affordable housing provision would undermine the Council's strategy and is contrary to policy 3.12 of the London Plan that requires developers to provide the maximum reasonable amount of affordable housing in development schemes. The affordable housing offer would also be inconsistent with: London Plan policies 3.11 and 3.13; policy SP02 of the LBTH Core Strategy 2010; and policy DM3 of the Managing Development Document DPD 2013.

24. The £6m difference can be apportioned to two main elements: the value of the residential units (representing some £2.1m<sup>1</sup>); and procurement costs (representing some £3.9m<sup>2</sup>) (Document TH/CLOSE para 7).

### **Viability: Residential Values**

25. A scheme average net sales value of £530/sq.ft (£530psf) is considered to be appropriate (Document TH/CB/P, section 5). This figure takes into consideration evidence from sales at the nearby Streamlight Tower, which is seen as the best comparable scheme, although unlike the appeal scheme, Streamlight is a car free development. However, it is acknowledged that the existing Streamlight Tower has superior views and a superior location to the South of Aspen Way. Accordingly, the average £581psf average net sales value of that development (Document TH/CB/P para 5.15.1) is higher than the £530psf adopted for the appeal scheme.
26. The location of the site (close to jobs, including those at nearby Canary Wharf, shops, buses and the DLR) and the high quality design of the proposed scheme and the provision of parking spaces are relevant factors in assessing residential values. Accordingly, it is considered that average sales values higher than £530psf would be achievable but the average figure of £530psf is considered appropriate as it would be likely to secure a good rate of sale (Document TH/CB/P para 5.16). This differs from the £520psf figure used by the Appellant and would amount to some £2.1m of additional yield which would be available to provide an increased proportion of affordable housing.
27. The approach taken by the Appellant is unreliable as it is based upon a basket of some 14 properties that are considered to set the tone of values to the north of Aspen Way (Document WS/JK/P Appx 5). However, many of these are some considerable distance from the appeal site and nearby developments south of Aspen Way. Their usefulness and relevance to values closer to Aspen Way is considered to be questionable, leading to a flawed approach to the determination of realistic residential values.

### **Method of Procurement and Construction Costs**

28. The Appellant's estimate of construction costs is too high. This is largely because the proposed method of procurement would be through the appointment of a main contractor. In addition, while agreement has been reached on many matters in the run up to the Inquiry, the Appellant's cost estimates relating to the achievement of Code for Sustainable Homes Level 4, office provision, drainage and services connections are too high (Document TH/DG/P Appx 1).
29. The method of procurement is important because the Appellant's expected method would lead to the main contractor's mark up on costs of some 17% (Preliminaries @ 14%, Overheads and Profit (OHP) @ 3%) (Document

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<sup>1</sup> Calculated by assuming a 30.4% affordable housing provision and then calculating the difference in value produced depending on whether the figure of £520psf is used or the figure of £530psf.

<sup>2</sup> Comprising the two Preliminaries/OH&P figures of £3,062,289 and £869,515 found in the table at Document TH/DG/P Appx 1.

TH/DG/P section 2). This assumption is not justified. This is because, in the event that a substantial 'house builder' developer purchased the site and developed it outright, or else delivered the scheme pursuant to a Joint Venture (JV) with WSG, then that house builder would operate on the basis of 12% preliminaries with no extra allowance for profit.

30. Where a developer claims that a scheme cannot support levels of affordable housing that the Council would normally expect, it is necessary to explore the available options with a view to maximising affordable housing provision. Here there are other available options and there are other schemes where these have been used. Also, it is understood that WSG has itself made use of alternative methods of procurement in some instances. The Appellant's argument that the nature of this scheme (particularly the commercial/residential mix) should preclude the consideration of potential savings that could be achieved by alternative methods of procurement is not borne out by recent experience on other developments (Document TH/DG/P, section 2.2).
31. The potential saving on the cost of procurement (deriving from both the method of procurement and other disputed costs) is estimated at £3.9m (Document TH/Close para 7) and this would translate into the ability to provide an increased proportion of affordable housing. The Appellant's failure to acknowledge this potential saving in construction costs means that his estimate of the proportion of affordable housing that could be offered is unreasonably low.
32. The reasons given for failing to acknowledge the reality of the savings that could be anticipated are far from robust and appear all too shaky. The Council has considered how the development could, and in all likelihood would, be developed in the real world. The contention that a house builder would not be prepared to acquire an interest in the site is not seen as compelling. This is because the residual risk that might be perceived in building out a type of floorspace (the commercial element of the scheme) with which a house builder was unfamiliar and where the proportion of that floorspace represents less than 20% of the scheme, is not considered to be at all substantial. Both of the chartered surveyors that gave evidence for the Council gave oral evidence to say that such considerations would provide no deterrent for house builders of the type that might be interested in the site.
33. As for the contention that a house builder acquiring the site could effectively hold the Appellant to ransom; this does not stand up as any arrangement would involve a bidding process that could be expected to drive up the price to its market value. Accordingly, there is no potential ransom.
34. Apart from savings derived from the method of procurement, there are a number of other items of cost that remain in dispute. These include: a) the Appellant's contention that it would cost £392,000 more than calculated by the Council to comply with the Code for Sustainable Homes Level 4; b) the difference between 7% as an appropriate return in respect of affordable housing assumed by the Council and 10% adopted by the Appellant; and c) differences in construction costs for the commercial element of about £1m (Document TH/DG/P Appx 1). Together, these items represent a significant financial difference between the parties which are relevant in determining the

quantum of affordable housing that it would be reasonable to expect from the scheme.

## **Conclusion**

35. The London Plan requires that the maximum reasonable amount of affordable housing should be provided. Here, the Council calculates that this amounts to 30.4% (below the 35%-50% range the Council would normally expect). The reasons given for offering only 12.5% have been examined and found to be lacking in robustness. The scheme would remain viable whilst delivering 30.4% and it is necessary for the scheme to deliver that amount in order to remain compliant with the Development Plan, and in particular policy 3.12 of the London Plan. The Appellant has also offered to provide 20% of affordable housing as an alternative to the 12.5% offer. The Appellant views this as unviable but preferable to a refusal of planning permission should the 12.5% figure be rejected. Should a decision be issued on the basis of a quantum of affordable housing of 20%, the Council would seek to maximise the affordable housing and would not seek any element of Social Rent (Document TH/BE/UP para 2.6).
36. In the light of the post inquiry S106 obligation (Document CD/J/07) it is now accepted that SC35 is no longer relevant or necessary (email attachment at Document CD/J/07).

## **THE CASE FOR WORKSPACE GROUP PLC**

*The material points are:*

### **Planning**

37. Government policy provides an imperative to deliver growth and there is a requirement on LBTH to meet and exceed its housing targets. Government policy also provides a presumption in favour of sustainable development. Moreover, development should not be constrained by unrealistic demands on the viability of a scheme. National policy in particular seeks to encourage and not restrain delivery. This means that affordable housing levels as low as 0% can sometimes be justified (Document WS/JC/P section 3).
38. It is estimated that this scheme would deliver the maximum reasonable amount of affordable housing, while providing additional market housing and additional commercial space on a site in a highly sustainable location that currently offers only a limited amount of commercial space. This provides a strong imperative to encourage the delivery of the scheme without delay (Document WS/JC/P).
39. LBTH accepts that it does not have a 5 year supply of deliverable housing sites (Document WS/OPEN para 18, TH/BE/P paras 10.24 & 10.25). This means that the overall supply is in need of a considerable boost in order to meet this pressing and immediate need. Neither national nor local policy supports the view that delivery should be postponed lest more favourable economic circumstance should prevail in the future. Such restraint is not justified. The



need to meet the urgent, pressing and even desperate and the opportunity to provide new housing should be grasped.

40. Planning can make a significant contribution to the potential for economic growth and housing and economic development have been specifically identified as the main potential drivers of planning led growth (Document WS/JC/P Appx 2, (DCLG statement on Housing and Growth). Accordingly, very great weight should be placed on the potential of this scheme to assist in achieving economic growth.
41. The proposal would not only make a contribution to the number of affordable homes available locally (a minimum of 45 units or 12.5% of the scheme total). It would also create jobs in construction, marketing, cleaning and maintenance. Furthermore, a home for new jobs would be created in the commercial part of the development.
42. The key issue in this case is whether the scheme would deliver the maximum reasonable provision of affordable housing. This depends upon a consideration of the issues of both values and costs.
43. The Framework seeks to secure delivery in the real world and not to restrain it and policy 3.12 of the London Plan seeks to encourage rather than constrain provision. This requires Councils to be realistic and flexible in their demands. Here, a reasonable viability analysis has been prepared (the original viability assessment by GVA, dated December 2011, is found at Document CD/B4/02). The evidence given by the Appellant's witness on viability shows that the maximum reasonable proportion of affordable housing that can be provided is 12.5% (Document WS/JK/REB para 26).

## Values

44. The site falls within a 'grey zone' in that achievable values should be higher than properties located to the immediate north, but equally will have to be at a significant discount to properties located to the south of Aspen Way, which reflects high value locations (Document WS/JK/P, para 9.38). The difference between the parties in terms of residential values is between the Appellant's figure of £520psf and the Council's figure of £530psf. This represents a difference of only 2%, which is ordinarily well within the valuation tolerance that can be expected between valuers and shows that the Appellant's values are reasonable.
45. The £520psf figure is underpinned in a number of ways. In February 2012, the independent valuers (BNP) employed by the Council reviewed the analysis of the Appellant (Document CD/B4/02) and took the view that a value of £475psf was appropriate (Document C/DG/01). This should be given significant weight. Then, further, Savills produced an overall elemental pricing matrix for WSG (Document WS/JK/P Appx 6). This analysis resulted in an average of £499psf. No comparable analysis has been produced by the Council, who rely on an average analysis. This has given an overall tone to the applicable values, but for complete robustness a further 4.2% has been added. This gives the £520psf figure that is relied upon. It should be noted that this is almost 10% higher than that found acceptable by BNP in its independent report to the Council.

46. The Appellant's overall figure of £520psf is consistent with the more desirable units at Streamlight (a nearby tower block to the south of Aspen Way, see Document WS/JK/P Appx 15b) selling at up to £676psf (which has been achieved just once in reality). The Council's figure of £530psf would raise this figure to £689psf which has never been achieved at Streamlight. Furthermore, the Council accepts that the Streamlight tower is sited to the south of Aspen Way in an area that displays a higher tone than do the surroundings of the appeal site. The commercial nature of the Poplar Business Park site along with the close proximity of the DLR are seen as negative factors that make this site less attractive than Streamlight in terms of residential amenity. There is also a higher specification in relation to room interiors and fittings at Streamlight, when compared with those envisaged at the Poplar Business Park (Document WS/JK/REB p7). The absence of car parking spaces at Streamlight is not considered to be of significance in respect of the price of residential units as a separate valuation is placed on the spaces themselves.
47. The Council's valuation witness was able to accept that the figure of £520psf cannot be characterised as unreasonable. Accordingly, this figure can be relied upon and safely used as part of a reasonable assessment of the residential values that are likely to be achieved.

### Costs

48. In February 2012 BNP, on behalf of the Council, agreed a costs analysis which was produced by the Appellant (Documents CD/G/01 & CD/B4/02). Subsequently, in October 2012 the Appellant instructed Gleeds to produce a feasibility cost estimate to reflect the current scheme (Document WS/DC/P Section 3). This is broadly in line with the analysis which is now tabulated at Document TH/CB/UP Appx 1. It is also consistent with the method approved by the London Plan Toolkit (Document CD/G/04). This consistency is strong evidence that a correct approach has been adopted by the Appellant.
49. There is a fundamental difference of approach between the parties in the matter of the procurement route that could be taken in order to deliver the scheme. The Appellant has reviewed costs on the basis of a traditional appraisal method and this includes allowances for the main contractor's Preliminaries and Overheads & Profit (OHP) (Document WS/DC/P, Section 4). This approach has been applied in other schemes that are before the Inquiry (for example at Wokingham (Document WS/JK/P Appx 14)). This does not exclude the involvement of a house builder if operating as a contractor in the usual way.
50. The Council's approach is based upon a number of assumptions: a) the landowner sells his interest in the land for its Current Use Value; b) the site is then developed by a particular type of volume house builder who is able to reduce costs and then; c) volunteers, at no cost, having paid for the transfer of the whole site to itself at value to re-transfer the commercial element of the development back to the original landowner. When put in this way it is clear that this is not the way in which the planning system is meant to assess viability. Furthermore, this novel approach only emerged once the Council had determined to refuse planning permission, contrary to officer recommendations (CD/C/05 & 06).

51. Further, there is nothing to show that this novel approach has ever been adopted as suggested, nor of any planning decision being taken on the basis of such assumptions, nor of any viability analysis being required on such a basis. There are also sound reasons why this theoretical approach should be shunned as it is not for the planning system to require a landowner to sell his land to a company whose particular characteristics might or might not have an influence on the amount of affordable housing the site can reasonably provide.
52. In addition to the inadvisability of this theoretical approach, there are basic errors in the approach that has been taken. Firstly, there is a complete failure to make any allowance for a competitive return to the landowner. Secondly, a house builder would not approach the development as it would a normal house building project. This is because this is a very large capital project of which a significant part (the commercial element) would be beyond the normal expertise of such a developer.
53. Examples quoted (TH/DG/P p.4) of schemes that had a commercial element do not have such a significant proportion of commercial space and do not support the view that the suggested novel approach is workable. This leads to the conclusion that a traditional approach to procurement should prevail and that the Council's alternative suggestion is given little weight.
54. Taking the Appellant's view on procurement would remove about £3.8m of difference between the parties, thereby reducing the amount of affordable housing that could reasonably be expected when compared with the Council's estimate. These consequences are set out at document WS/JK/REB p14 as follows:
  - a) 12.5% accepting the Appellant's case and assuming affordable rented provision.
  - b) 10.5% accepting the Appellant's case and assuming larger affordable units of 3, 4 and 5 bedrooms
  - c) 20% assuming 'non traditional' procurement route and based on DJD's costs on preliminaries and overheads and profit (OHP).
  - d) 17.5% based of scenario c) above but with larger affordable units (Document WS/JK/REB p14).
55. The Council suggests that some form of Joint Venture would provide a means of reducing costs significantly. It is accepted that preliminaries might be reduced to 15% from 17% but this would require the Council's benchmark profit level for the development as a whole (18-20%) to be shared between the Joint Venture parties. There is no evidence to show that a reduction in the usual profit in this way would be acceptable.

### **Other Minor Differences**

56. There is a difference in office fit out costs of about £1m between the parties. The Appellant's figures are set out at Document WS/DE/REB Appx 3. The Council's propositions in this respect are not supported by evidence and appear as assertions, which cannot be tested. The Appellant's figures are based on the WSG house style and should not be displaced.

57. There are other minor cost differences, but again these are not supported by evidence and so cannot be properly tested. The reasonable figures provided by the Appellant should be preferred.
58. Different modelling techniques display cumulative costs either as a straight line or an S-curve. However, both are fit for purpose and robust. Accordingly, any argument that these alternative forms of modelling show any significant material difference that should be taken into account is not supported

### **Overall Impact of the Appellant's case**

59. If the Appellant's evidence on residential value of £520psf is accepted and it is not considered appropriate to apply a wholly new and untested procurement method and the Appellant's other costs are accepted as reasonable, it would be appropriate to find that the proportion of affordable housing that should be provided should be approximately 12.5%.
60. If, however, any of the costs proposed by the Appellant are found to be unreasonable or the values used are unreasonably low an explanation would be required as to why and by how much. The difference between 12.5% and 20% affordable housing provision is seen to be the equivalent of £4.8m<sup>3</sup> (Document WS/CLOSE para 147). The additional provision of this sum is not necessary and would significantly reduce the likelihood of delivery as it would be an unnecessary burden on the provision of affordable housing.
61. Furthermore, if the decision maker takes a different view, this may be tolerable if the Appellant's viability appraisal is not seen as unreasonable by a margin of £4.8m or more, as planning permission could still be granted on the basis of the 20% affordable housing offer<sup>4</sup>. In these circumstances the decision maker would have to indicate what figure above 12.5% is reached as a reasonable maximum and explain why (Document WS/CLOSE para 151). This proportion can then be given weight in granting planning permission in accord with the CIL regulations. The balance that would represent the gap between the reasonable maximum and 20% would not be given weight as a reason for granting planning permission, but would still be provided as part of the proposal that would include the 20% offer (WS/CLOSE para 152). These circumstances are not unusual, particularly in affordable housing cases where, for other reasons, 100% affordable housing might be offered (say by a registered provider). However, this exercise would be unnecessary if the

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<sup>3</sup> The source of this figure is given as WS/JK/REB. However, the table at para 24 refers to the difference between 12.5% provision and 20% provision as the difference between £83.31m and 79.44m = £3.87m (close to the £3.9m used by the Council). I can find no direct reference to £4.8m in Mr Kut's Rebuttal proof and accordingly prefer the £3.9m used by the Council that roughly corresponds to Mr Kut's figure.

<sup>4</sup> The 20% figure is offered by the Appellant as an unviable maximum amount that might nevertheless allow the scheme to proceed. It is supported by a S106 planning obligation and is offered on the basis that it would be preferable to receive a grant of planning permission with an affordable housing provision of 20% rather than a refusal of planning permission, if 12.5% is found to be unacceptable. However, the Appellant warns that as the 20% level of provision is in his view unviable, a planning permission granted on the basis of the 20% level of provision may not be proceeded with. Above this level it is considered that the scheme would so unviable that it would not be likely to proceed (Document WS/OPEN para 52).

Appellant's core argument is accepted (Document WS/CLOSE par 153). In those circumstances, planning permission could be granted on the basis that the proportion of affordable housing that would be provided is 12.5%.

## **Design**

62. In terms of design the scheme meets the aspirations of both the WSG and LBTH. It is consistent with the Government's commitment to encourage good design. Accordingly, there are no design issues that would prevent the scheme from proceeding without delay (Document WS/JCA/P).
63. One of conceptual features that led to the formulation of the design was the creation of a new link between Poplar High Street and the waterside environment of the River Thames, Docks and Canary Wharf, to the South of Aspen Way. The scheme layout provides for this linkage, although the Aspen Way crossing is outside the site and so is not part of this scheme. Nevertheless, this link represents a key aspiration of LBTH that was identified early in the design process.
64. Overall, the scheme is seen as an exciting and dynamic design that would fit into and knit together several disconnected urban elements. It would lead to the creation of a positive and sustainable new place to live and work (Document WS/JCA/S).

## **Delay**

65. The Council suggests that if the scheme is judged to be incapable of delivering the level of affordable housing that it has arrived at, planning permission should be refused. The Council's planning witness says that this would then enable the question of redevelopment to be revisited when the economics of the scheme suggest that a greater contribution to affordable housing levels can be expected, although this is not understood to be the formal position of the Council (Document WS/CLOSE, para 30).
66. In any event, this approach is unacceptable and unreasonable as it would hold back the delivery of a significant number of new homes in London at a time when there is an urgent need to address the supply of new housing in the Capital. Stalling this development cannot be justified on the basis that the site might at some future date deliver a greater proportion of affordable units when this planning application includes a reasonable offer of affordable housing provision that would be delivered following the grant of planning permission.

## **The S106 Obligations**

67. There are two affordable housing offers intended to give the decision maker more flexibility (CD/J/02). The first offer of 12.5% reflects the Appellant's case in its entirety and a benchmark 20% return on costs. The second offer of 20% affordable housing is not viable on the Appellant's case. This would be much more difficult to fund and significantly less likely to deliver, but is considered preferable to facing a refusal of planning permission. It gives rise to flexibility up to the 20% level, as has already been explained. Provision in excess of 20% is not catered for by the planning obligations as it is considered that at levels above 20% the development would not be deliverable.

68. Also, the S106 obligations contain an agreed contingent liability clause which, subject to the date and scale of commencement, would allow the Council to re-appraise the level of affordable housing which can be provided. This means that if there is a significant shift in the market upwards, prior to works of substantial commitment, further on-site affordable housing would be provided (Document WS/Open p.6).
69. The S106 dealing with financial contributions has resulted in the Council withdrawing its objections relating to the adequacy of the sums offered (CD/J/01). The SoCG relating to the S106 obligations (CD/J/03) explains why these accord with the CIL regulations and should therefore be given weight.
70. Following the close of the inquiry WSG acquired the freehold of the site (Document CD/J/07 (covering letter)). This was followed by the submission of a further S106 obligation binding the freeholder (WSG) to the terms of the earlier S106 obligations (Document CD/J/07). This means that SC35 is no longer relevant, as the freeholder is now a party to the obligations.

## **OTHER MATTERS**

### **Written Representations (Documents WR/YLC; WR/EA; and WR/EM)**

71. The concerns expressed include traffic and safety, construction noise and outlook. The Environment Agency has no objection subject to the imposition of conditions relating to the risk of flooding (Document WR/EA). Neither of the main parties has expressed concerns relating to these conditions.
72. The main concerns expressed by existing residents relate to disturbance during construction (including construction noise and dust) and the effect of the development in blocking out views and creating a greater density of development along with noise and traffic congestion.

## **Conditions**

73. An initial list of suggested conditions (SCs) with reasons was provided in the SoCG (Document CD/F/01.13). This was refined during the course of the Inquiry and the updated list, with reasons, is found at Document CD/F/01.14. The parties consider that the conditions (save SC35) are in accord with Circular 11/95. However, they consider that SC35 is no longer necessary, in the light of the updated Planning Obligation dated 17 May 2013 (Document CD/J/07).
74. The matters covered by the suggested conditions are given below:
  - SC1 time limits for the commencement of the development;
  - SC2 the phasing of construction;
  - SC3 the approval of details and samples of materials;
  - SC4 the infiltration of surface water into the ground;
  - SC5 a risk assessment relating to contamination;
  - SC6 a verification report relating to any approved remediation strategy (as required by SC5);

- SC7 & SC8 the control of piling;
- SC9 impact studies on existing water supply infrastructure;
- SC10 access improvements;
- SC11 delivery and servicing plan;
- SC12 construction logistics plan;
- SC13 the provision car parking spaces and cycle and motorcycle spaces;
- SC14 the provision of electric charging points for cars and at least one car club space;
- SC15 the timing of the provision of hard and soft landscape works;
- SC16 the provision of wayfinding information on the site;
- SC17 the provision of lighting on the site;
- SC 18 habitat creation including bat roost and swift boxes;
- SC19 the provision of wheelchair useable and wheelchair adaptable units;
- SC20 the achievement of Lifetime Homes Standards as set out at policy 3.8 of the London Plan;
- SC21 the provision of sound insulation and noise control;
- SC22 the approval of flues and extraction systems relating to any café or restaurant uses;
- SC23 the provision of refuse and recycling facilities;
- SC24 the submission of Final Code for Sustainable Homes certificates for all residential development in accord with policy 5.3 of the London Plan;
- SC25 the submission of Final BREEAM certificates demonstrating an 'Excellent' rating for non-residential units in accord with policy 5.3 of the London Plan;
- SC26 the installation of a heat network supply to all spaces within the proposed development;
- SC27 the installation of photovoltaic panels;
- SC28 Archaeological works;
- SC29 details of crane and scaffolding where at a higher level than the proposed development;
- SC30 specifies the highest part of the completed structure at 76.6m AOD;
- SC31 working hours for building and engineering works;
- SC32 the completion of a Black Redstart survey;
- SC33 the provision of a waste management plan;
- SC34 completion in accord with the approved plans (listed);

SC35 the inclusion of the site's freeholder as a party to the S106 planning obligations.

75. The reasons given for imposing these conditions can be found at Appendix B to this report. My conclusions on the acceptability or otherwise of the suggested conditions are found in the conclusions section of this report.

### **Planning Obligations**

76. At the Inquiry completed S106 Planning Obligations, dated 31 January 2013 were produced (Documents: CD/J/01 (dealing with matters except for affordable housing); & CD/J/02 (dealing with affordable housing)). There is also a SoCG relating to the Planning Obligations (CD/J/03). The parties also prepared a S106 clarification note explaining how they consider that the obligations meet the CIL Regulations 2010 and set out in the Framework at para. 204 (this is attached to Document CD/J/03). Some elucidation of the thinking behind the affordable housing obligation is set out in the Appellant's opening statement (Document WS/OPEN p.6).
77. Following the close of the Inquiry a further obligation was submitted, dated 17 May 2013 (Document CD/J/07). This does not seek to change the substance of the obligations. It does however recognise changed circumstances, as WSG is now the freehold owner of the site. Accordingly, the updated obligation is now binding on the freeholder.
78. The affordable housing obligation contains the following commitments:
- a) to limit the occupation of the Affordable Housing Units as Affordable Housing Units;
  - b) to provide wheelchair access (or wheelchair adaptability) to at least 10% of the Affordable Housing Units;
  - c) to provide Affordable Housing Units to London Design Standards and Life Time Home Standards, unless the Council consent otherwise;
  - d) to limit private housing occupation to 50% in each block until the Affordable Housing Units are completed and disposed to a Registered Provider or Alternative Affordable Housing Provider;
  - e) to provide a proportion of 12.5% affordable housing by floor area (in accord with Table 1 of the obligation); or alternatively, if so indicated in the decision, a proportion of 20% (in accord with Table 2 of the obligation);
  - f) to submit a revised Viability Assessment in the event that the Owner has not Practically Completed the Works of Substantial Commitment prior to the date 24 months from the date of the Permission;
  - g) procedures to be implemented following the receipt of a revised Viability Assessment;
  - h) appropriate levels of rent for Affordable Rent Units;
  - i) Disposal of any Affordable Housing Units;



- j) Specifies those not bound by obligations and restrictions;
  - k) Procedures relating to charges claiming protection from obligations and restrictions;
  - l) The price payable for Affordable Housing Units.
79. The obligations relating to matters other than affordable housing contains the following commitments:
- a) a contribution of £1,184,409.00 made up of:  
£531,889 for use towards additional healthcare facilities within LBTH; and  
£652,520 for use towards additional primary educational facilities within LBTH;
  - b) a contribution of £1,409,927.00 made up of:  
£469,287 for use towards additional secondary educational facilities within LBTH;  
£108,683 for use towards additional community facilities, including without limitation ideas stores, libraries and archives within LBTH;  
£96,957 for use towards training and development for employees of end-users of the Development;  
£300,000 for use towards junction improvements to Prestons Road Roundabout;  
£150,000 for use towards infrastructure in the vicinity of the Land including improvements to Poplar High Street;  
£270,000 for use towards public realm infrastructure in the vicinity of the Land; and  
£15,000 for use towards the promotion of the TfL pedestrian wayfaring scheme 'Legible London' in the vicinity of the Land;
  - c) terms and conditions relating to the payments listed above;
  - d) the payment of the Traffic Management Order Payment (amount unspecified) within two months of the Commencement Date;
  - e) compliance with a number of matters relating to car parking;
  - f) compliance with a number of matters relating to Employment Initiatives
  - g) the preparation, implementation and monitoring of a Construction Travel Plan and an Occupier's Travel Plan;
  - h) compliance with the Code of Construction Practice and participation in the Considerate Constructors' Scheme;
  - i) to limit the size of the Commercial Units to a gross internal area of 250sqm or less.

## **INSPECTOR'S CONCLUSIONS**

*References in the square brackets [x] refer to the paragraph numbers found in this report*

### **Main Consideration**

80. The main consideration is whether either of the amounts of affordable housing that are offered are adequate, bearing in mind the flexible approach to the level of provision that is set out in the London Plan at policy 3.12 [11] and the LBTH Core Strategy DPD at policy SP02 [14] and the LBTH Managing Development DPD at policy DM3 [15]. If not, whether there are any other material considerations that outweigh development plan policy and justify the grant of planning permission.

### **Development Plan**

81. The relevant development plan policies which are set out above [9-15] seek to maximise the provision of affordable housing within the borough within a framework that is based on targets and a need to consider the viability of individual schemes.
82. In order to comply with the overall thrust of the relevant policies it is clear that this development should be able to demonstrate that it provides the maximum reasonable amount of affordable housing. It is also clear that any judgement on this issue is subject to the viability of the scheme. In practice this means that the maximum reasonable amount could theoretically be anywhere in the range 0% - 50%. Examples have been provided of appeal decisions where levels at the lowest extreme of this range have been accepted [37].

### **The Framework**

83. The Framework seeks to ensure the delivery of new housing free from obligations and policy burdens that threaten the provision of viable schemes [17].
84. As the Council acknowledges that it does not have a 5 year supply of housing land that is available for development [39 ], having regard to the guidance at paragraph 49 of the Framework, the relevant local policies for the supply of housing should not be considered up-to-date and this housing scheme should be considered in the context of the presumption in favour of sustainable development.

### **The Affordable Housing Offers**

85. The offers of affordable housing provision are set out in the Appellant's evidence [67]. The base figure is given as 12.5%<sup>5</sup> but an alternative level of 20%, which is seen as unviable by the Appellant, is also offered by way of a planning obligation. These percentages equate to slightly lower figures if larger units with 3 or more bedrooms are included that are assumed to be

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<sup>5</sup> The Appellant's figures are based on floor area. I have adopted this measure throughout my conclusions.

social rented units. I give consideration to both offers (12.5% & 20%) in these conclusions.

86. The Appellant's case is that if the Council's arguments relating to both the method of procurement and the residential values that can be achieved are rejected, then the offer of 12.5% should be seen as the maximum reasonable provision [61]. This contrasts with the Council's estimate that the scheme could support a proportion of affordable housing of 30.4% [22]. The gap between the Appellant's estimates and those of the Council is about £6m with the difference relating to procurement amounting to about £3.9m and those relating to residential values are about £2.1m [24].
87. However, there is no planning obligation relating to a 30.4% level of provision. This means that without a further planning obligation, no offer over 20%<sup>6</sup> is available for consideration. Accordingly, as things now stand, if it is found that a level of affordable housing of over 20% can be reasonably required, there is no mechanism available to secure such a level of provision. This implies that if the Council's case is accepted either in its entirety, or to a substantial extent, then planning permission should be withheld unless a further planning obligation were to come forward for consideration. However, the Appellant has indicated that it would be extremely unlikely that the development would be capable of being proceeded with at a level of provision in excess of 20% [67].

### Method of Procurement

88. The Council argues that if, for example, a national volume house builder were to develop the site or some form of Joint Venture (JV) agreement were to be formulated, significant costs could be avoided and the scheme delivered at a much lower cost, which could yield a saving of as much as £3.9m[31].
89. The Appellant is highly sceptical of this suggestion and argues that it is wholly unrealistic [50-53]. In particular, it is pointed out that no examples of such an arrangement were cited in relation to any comparable schemes [51]. The Appellant considers that this site would not be likely to attract the interests of a volume house builder, who would typically own a site and then develop it in phases thereby generating income during the course of development. Here the house builder would first have to purchase the site from WSG. This seems unlikely to happen unless there was some incentive such as an offer in excess of the Current Use Value (CUV) of the site. The Appellant points out that DJD, for the Council, makes no allowance for such an incentive [54]. Furthermore, if WSG were to regain their interest in the site following development they would want to see some financial gain and likewise the house builder would want to see a return on his investment [52]. In my view, these would amount to opposing interests that would require negotiation. This leads me to conclude that there are significant barriers that would make such an arrangement unattractive and unlikely to be realised.

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<sup>6</sup> 20% represents the alternative offer made by the Appellant. It is what the Appellant regards as an unviable offer that would be much more difficult to fund and would be significantly less likely to be delivered. However, it has been chosen to give flexibility so that planning permission could be granted even if the Appellant's case relating to a 12.5% provision is rejected [67].

90. Accordingly, I do not consider that the Council has demonstrated that its suggestions relating to the procurement of the scheme can be relied upon to secure the delivery of this proposed scheme. It represents a theoretical approach that is not supported by significant and comparable experience or practice. Placing reliance on such a mechanism being negotiated and acted upon would result in a significant risk in unusual contractual territory, and it seems more likely than not that it would fail to secure the delivery of the scheme.
91. The Council's suggestion of securing an alternative method of procurement by requiring a particular route to be followed [30] is not supported by way of any appeal decision or council decision [51]. This does not surprise me as these are matters that require commercial judgements to be made. It does not seem reasonable to attempt to put in place limitations or restrictions that could constrain or jeopardise the procurement of the development. Misgivings were also expressed by the Appellant [51-55].
92. My overall conclusion on this aspect of the Council's case is that it relies on the Appellant choosing and attempting to negotiate an approach to the procurement of the scheme that appears to be largely untried and consequently uncertain and unnecessarily cumbersome and complex. While complexity itself should not stand in the way of achieving a worthwhile goal, the uncertainty introduces an unacceptable risk to the delivery of the scheme which could be avoided. This is because more certain, reliable and tried and tested methods of procurement are available that could be expected to deliver the development and provide a substantial amount of new housing on the site within the timescale of a planning permission.
93. The consequence of this conclusion is that I consider that it would be unrealistic to expect the development to deliver an affordable housing provision of 30.4%, as suggested by the Council, as this quantum relies on the use of a method of procurement that cannot be guaranteed and would be unlikely to be pursued.

## Residential Values

94. The Appellant has settled on a sales value of £520psf after taking into account a valuation exercise completed by Savills and then, on the basis of local knowledge and experience, increasing this figure to one that is considered to provide a robust estimate of the values that are likely to be realised<sup>7</sup> [45]. The Council has settled on a figure of £530psf, which it submits is a reasonable but not a maximum figure, as it takes account of the need to secure a good rate of sale [26]. The higher of these figures could yield an additional £2.1m.
95. The first point that should be noted is that the difference between these figures is about 2%, which the parties accept is within a range that might be expected between valuers [44]. This is helpful as it serves to demonstrate a level of conformity between the parties. It is also helpful that the Appellant acknowledges this particular location as a 'grey zone' between generally lower

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<sup>7</sup> Mr Kut gives a range of £510psf and £520psf and has made calculations based on the upper limit of this range.

valuations relating to properties north as Aspen Way and those to the south around Canary Wharf [46].

96. A factor that might influence valuations is that of interior specifications, on the general understanding that the higher these are the higher the values that might be realised. Here the specifications relied upon for the redevelopment of the Poplar Business Park are not seen as excessive by the Appellant and certainly lower than those found at the nearby Streamlight Tower to the south of Aspen Way [46]. Accordingly the Appellant urges caution in placing too much reliance on values reached by consideration of current net average values at Streamlight. This contrasts with the Council's view that Streamlight is seen as the most comparable scheme [25]. I take the view that there is reason to exercise some caution on the basis of this particular issue as the Appellant's costings do not include higher specifications, such as those found at the Streamlight development.
97. Another factor to be taken into account is the availability of on-site car parking and cycle parking spaces. At the Poplar Business Park 98 parking spaces (not all residential) and 554 cycle parking spaces are proposed [SoCG 4.7]. Streamlight is acknowledged to be a car free development [25,46]. While the Appellant does not accept that the availability of parking spaces would translate into higher prices [46], I take the view that the effect on uptake and/or prices could only be positive because this represents an additional and attractive amenity that is likely to be valued by potential occupiers.
98. A further factor that I regard as particularly significant is that of the public realm and ambience of the environment that would be created by the development. This was somewhat played down by the Appellant in terms of the influence on valuation (factors such as the industrial/commercial feel of the area and the overhead intrusion of the DLR and proximity of Aspen Way) [46]. However, the Appellant was also confident of the positive contribution that would arise from the design quality of the scheme, its landscape treatment, active frontages and generally pleasing ambience [62-64].
99. In contrast, the Streamlight Tower opens into the surrounding streets and so does not benefit from a public realm that has a particular sense of belonging to the development or providing space to pause or reflect or meet neighbours outdoors or enjoy the setting of a green space. These are all very significant advantages of a type that could only enhance values and, unlike the Streamlight Tower, these would become a fundamental part of the setting and ambience of the proposed towers at the Poplar Business Park.
100. It is also significant that the proposed development has the potential to link directly to the area to the south of Aspen Way [63]. The Streamlight Tower is located to the south of Aspen Way and benefits from being in this location. The Poplar Business Park is located to the north which, as already mentioned, places it in what the Appellant acknowledges to be a 'grey zone' as far as valuations are concerned [44]. The creation of a new pedestrian link direct from Poplar High Street to the south of Aspen Way (which is envisaged in the proposed layout [63]) would almost certainly improve the perception of the site as it would then be possible to enter the public realm at the Poplar Business Park and then progress with ease to the waterside environment of the Thames, Docks and Canary Wharf.

101. I acknowledge that at present there is no such link and that there is not certainty as to its provision. However, the design of the scheme focuses on the provision of the link, which is described as one of LBTH's key aspirations by the Appellant's design witness [63]. Accordingly, it seems highly likely that it would follow on from this development. While it is not possible to place any particular valuation on this future possibility, there is every reason to believe that, if provided, it would have a positive effect on the perception of the site. This must play its part in the making of commercial judgements on the attractiveness of redeveloping the site and the values that it could be expected to command. It provides a good reason to take an optimistic view on values.
102. The Appellant believes that the value of £520psf is at the upper limit and that generous and optimistic allowances have been made in order to reach this figure [46]. In contrast the Council believes that its figure of £530psf is by no means a maximum figure and that it makes a reasonable allowance for a good rate of sales [27].
103. I acknowledge that the Appellant's figure takes account of an extensive range of factors that has led to an estimate above that suggested by Savills [45] and I consider that the scheme appears to justify the judgements that have been made. However, I also consider that the estimated value appears to demonstrate a reluctance to accept all of the positive contributions that the design, setting and ambience of the proposed scheme has to offer.
104. Apart from internal specification, the Appellant places reliance on the perception of the surroundings at the Streamlight Tower as a factor that contributes to the higher prices that that development commands [48]. Analysis of the proposed setting of the appeal site reveals that it would be a development with some very distinct advantages over those at the Streamlight Tower (a more attractive public realm, with open areas and landscape planting all within grasp of Poplar High Street and local buses and the DLR and a strong likelihood of a future direct pedestrian connection to the South of Aspen Way). In the light of this and despite the location of the site to the north of Aspen Way, I find the Council's estimate of residential values to be reasonable and could be expected to be achieved.
105. Achieving a value of £530psf would (taking the Council's figure [25]) generate £2.1m above the Appellant's estimate. In turn this would enable a higher level of affordable housing to be provided that would be in excess of 12.5%. The question as to how far above 12.5% has not been specifically addressed by the parties. This is understandable as, potentially, the decision taker is faced with the prospect of giving weight to a multitude of factors which would, only at the extremes, lead to the Appellant's case or the Council's case being established in full. The figures do not support either extreme, but there is good reason to believe that the scheme would yield residential values that would enable more than 12.5% of affordable housing to be provided.
106. The parties have not sought to address the question of what level of affordable housing provision a further £2.1m would be able to support. However, the Appellant's main valuation witness did calculate that a saving of about £3.9m on procurement, giving a build cost of £79.440m, would equate to the provision of a proportion of affordable housing space of 20% (as opposed to the Appellant's offer of 12.5%, based on a build cost of £83.310m) [54, 60].

## Other Items

107. The Appellant has examined differences between his analysis and the DJD analysis [56-58]. The results have been tabulated in the Council's evidence [34]. This narrows down the areas of disagreement but still leaves some matters of difference. Of significance is the construction costs of the office space with the Council's figure being £103psf and the Appellant's figure at £120psf, amounting to a total difference of around £1.3m.
108. The costs that give rise to the Appellant's figure are based on knowledge of their house style along with comparable developments [56]. The Council's figure is given as an opinion based on their assumed specification. This opinion does not in itself provide a sound basis to reject the Appellant's figure. Accordingly, while it may be possible or even reasonable to assume that some saving could be available here, the Council's figure has not been clearly demonstrated to be preferable.
109. There are other areas where there are smaller differences, but none where there is clear evidence to show that the Appellant's figures are demonstrably inaccurate, unreliable or unreasonable.
110. I do not consider that the Council's assertions [34] are supported by any clear evidence that indicates that they should be preferred over the Appellant's figures. This means that I consider that no further adjustment of the affordable housing levels has been shown to be justified.

## Other Matters

111. Some off-site highway works are required by condition and matters relating to construction noise could be dealt with by means of suggested conditions [74], which I consider to be effective and necessary. The new towers would inevitably block some views and neighbours would be affected during construction by traffic, noise and dust (subject to limitations imposed by means of conditions). Following the completion of the scheme the resulting changed environment could have further effects that could be considered detrimental (for example shading, different noise sources, new traffic movements). Some of these are clearly of great concern to some neighbours.
112. Taking into account the suggested conditions, there is good reason to accept that adequate controls would be exercised during construction. This would limit the impact on existing residents. Accordingly, while construction would inevitably lead to disruption, noise and other inconvenience, this cannot be regarded as a good reason to prevent the development from taking place. The loss of views is of great concern to some, but views from residential properties are not protected and losses cannot by themselves justify preventing development from proceeding. The effects of shading and the presence of the new blocks would inevitably diminish the level of amenity enjoyed by some existing residents. However, no evidence has been brought to show that these effects would be so harmful that they would justify the refusal of planning permission. Additional traffic would also bring with it an increased level of risk, but again there is nothing to demonstrate that this should be regarded as unacceptable.

### **Planning Obligations: General**

113. On 17 May 2013 the Appellant, who is now the freeholder, entered into a fresh planning obligation that binds the freeholder to the terms of the earlier obligations [77]. In the light of these circumstances reliance can now be placed on this latest planning obligation to secure the contributions and other actions that are specified in the planning obligations.

### **Planning Obligations: Financial Contributions and matters other than Affordable Housing**

114. The financial contributions offered by the Appellant are set out in a Planning Obligation dealing with matters other than affordable housing [81]. It is on the basis of this that the Council decided not to pursue its second reason for refusal [4]. The parties both consider that these contributions are in accord with paragraph 204 of The Framework and the CIL regulations and should therefore be taken into account in assessing the acceptability of the scheme.
115. I find no reason to differ from this conclusion because the contributions are in my view: a) necessary to make the development acceptable in planning terms by providing contributions that are responsive to the demands that would be made by the development; b) directly related to the development; and c) fairly and reasonably related in scale and kind to the development.

### **Planning Obligations: Affordable Housing**

116. The planning obligation relating to affordable housing [78] gives two alternatives: Table 1 of the obligation would apply if the SoS decides that the maximum reasonable provision of 12.5% by floor area is appropriate; Table 2 of the obligation would apply if the SoS decides that the maximum reasonable provision is more than 12.5% and no more than 20% by floor area.
117. The 20% figure would (on the Appellant's case) result in a reduced and unviable return on cost and therefore be much more difficult to fund and significantly less likely to deliver [67]. However, rather than face a refusal of planning permission, the Appellant has offered to provide 20% affordable housing if his case relating to 12.5% is not accepted. If any or all of the difference between 12.5% and 20% were found to be necessary and reasonable then the Appellant contends that it can be taken into account in accordance with the CIL regulations [61]. The Appellant goes on to suggest that any remaining proportion up to 20% would not be given weight as a reason for granting planning permission, although it would still be provided as part of the proposal on the basis of the 20% offer [61].
118. As I see it, the Appellant is willing to consider implementing a planning permission providing 20% affordable housing in circumstances where his offer of 12.5% is considered inadequate. However, in granting planning permission the Appellant suggests that the decision taker need only be concerned with the need to provide the reasonable maximum amount of affordable housing. Any margin above that level up to a maximum of 20% would be provided, but in the knowledge that it would exceed the reasonable maximum level that has been arrived at.



119. In view of my conclusion that the reasonable maximum proportion of affordable housing is more than 12.5% (consistent with an additional £2.1m from residential values), I consider that planning permission should not be granted on the basis of the 12.5%. This leaves the option of granting planning permission on the basis of the 20% offer, which the Appellant considers to be deliverable, but not without risk. However, the Appellant has indicated that this outcome would be preferable to the refusal of planning permission [67].

### **Conditions**

120. Following discussion, a revised list of suggested conditions agreed by the parties was provided at the Inquiry [73]. The conditions suggested by the Environment Agency are included in the list of suggested conditions [74].
121. The conditions listed (save Condition 35) are in my view acceptable and in accord with the tests set out in Circular 11/95. However, SC35, that requires a further planning obligation is entered into prior to the commencement of development, is no longer relevant or necessary in the light of the planning obligation dated 17 May 2013. In any event I consider SC35 to be contrary to guidance and accordingly unacceptable.
122. The parties have given reasons in support of each condition [75] and where appropriate the relevant policies are cited in support of the conditions suggested. These reflect the current policy background following the adoption of the Managing Development Document 2013 [9]. I consider that the reasons given justify the imposition of each of the conditions suggested (save Condition 35). In conclusion, I find that suggested conditions 1-34 (listed at Appendix B to this report) meet the requirements of the Circular and should be attached if planning permission is granted.

### **Other Material Considerations**

123. The Appellant's case is not based on the premise that there is good reason to accept that there are material considerations that suggest that planning permission should be granted contrary to the development plan. The main argument is that planning permission should be granted with a level of affordable housing that is shown to be consistent with the development plan. I do not find that there are material considerations that suggest that there is good reason to form a conclusion that is not in accord with the development plan.

### **Inspector's Overall Conclusions**

124. The urgent need for affordable housing is not in dispute, nor is the policy basis on which the Council has relied. The question is one of quantum and what level of affordable housing the development proposal can bear.
125. The Appellant has offered an Obligation which indicates two levels of affordable housing provision: 12.5% and 20%. Neither meets the Council's requirements, though the provisions of the London Plan do permit flexibility to be applied where a requirement based on the policy aspiration would demonstrably render the scheme as a whole unviable, and thus undeliverable.

126. The inquiry heard detailed and opposing evidence from the main parties concerning the capacity of the development to support affordable housing at the above levels. I was also invited to consider identifying another level between these in the event that I considered 12.5% to be too low but 20% to be excessive [60]. In noting the latter figure, incidentally, I have in mind the fact that the Appellant has argued that that level of provision may be tolerable if the Appellant's viability appraisal is not seen as unreasonable by a margin of £4.8m or more (although the evidence suggests that this margin is more accurately represented as £3.9m) [60].
127. Bearing in mind that the Appellant put forward the 20% figure (supported in an Obligation), it seems reasonable to take it into account, while bearing in mind that the Appellant considers that the 20% contribution would result in a reduced and unviable return on cost. However the Appellant has stopped short of suggesting that the development would not be delivered at the 20% level of affordable housing provision (indeed the Appellant indicated that he would wish for planning permission to be granted at this level rather than face a refusal) [67].
128. Returning to the question of an alternative figure somewhere between 12.5% and 20%, it seems to me that that question misunderstands the basis upon which an appeal can be made and a S106 Obligation offered. Even if I were to speculate that a reasonable figure was to lie somewhere between the two amounts, the appeal can only be decided by reference to what is on offer.
129. Accordingly, my conclusions are informed by the fact that there is a pressing need for affordable housing in the area, which the development plan policies strongly advocate and that this development should be expected to provide. Furthermore, I am satisfied that the development could bear a level in excess of 12.5% affordable housing and whilst at 20% there would be concerns on the Appellant's part as to viability, there is no certainty that these concerns are of such an order as to mean that the development would not be delivered in the reasonably foreseeable future. In addition, granting planning permission on the basis of the 20% level would enable development to commence, whereas refusing planning permission would generate further uncertainty and delay.
130. In my judgement, therefore, on the basis of the foregoing, there is good reason not to place weight on the Appellant's Obligation to offer 12.5% affordable housing and a sound and reasonable basis to attach weight to that proposing 20%. Accordingly, I conclude that planning permission should be granted, subject to conditions, on the basis of the 20% affordable housing provision and that such provision would meet the requirements of CIL Reg 122 and the policy of the NPPF at para 204.
131. I recognise that despite the fact that the Appellant did not suggest that the scheme would not be delivered if his Obligation to deliver at 20% was given weight, the SoS may of course take a different view in terms of the risk that the Appellant's reference to the scheme being unviable might be taken to mean that in reality the delivery of the scheme as a whole would be put at risk. That is a matter of judgement but, on the evidence available, there is no basis upon which one could confidently specify a particular level at which the viability threshold would be met and delivery of the development thus assured.

Moreover, the Appellant has offered no Obligation to deliver housing at any level other than 12.5% and 20%.

**Recommendation**

132. I recommend that the appeal is allowed.

*Chris Frost*

**Inspector**

## **APPEARANCES**

### **FOR THE LOCAL PLANNING AUTHORITY:**

Alexander Booth of Counsel

Instructed by LBTH

#### **He called**

Ms Jo Dowle

Development Officer LBTH

Mr Dan Gregory

Director DJD

Mr Chris Baldwin

Partner, DJD

Miss Beth Eite MA LRTPI

Planning Officer LBTH

### **FOR THE APPELLANT:**

Russell Harris QC

Instructed by K & L Gates LLP

#### **He called**

Mr David Carkeek  
MRICS

Gleeds

Mr Jacob Kut MRICS

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Mr James Carr  
BSc(Hons) DipArch  
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Partner, Barton Willmore

Mr Julian Carter  
BA(Hons) MRTPI DipTP

Director, GVA

## Appendix A

### Abbreviations

1990 Act	- The Town and Country Planning Act 1990
2004 Act	- The Planning and Compulsory Purchase Act 2004
1999 Regulations	- The Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999
AOD	- Above Ordnance Datum
Appx	- Appendix
BNP	- BNP Paribas Real Estate
CD	- Core Document
CIL	- Community Infrastructure Levy
CGI	- Computer generated image
CLP	- Construction Logistics Plan
CSH	- Code for Sustainable Homes 2006 (Document JP/2 Apx 2)
CUV	- Current Use Value
DJD	- Drivas Jonas Deloitte
DLR	- Docklands Light Railway
DPD	- Development Plan Document
DSP	- Delivery and Service Plan
EIA	- Environmental Impact Assessment
The Framework	- National Planning Policy Framework (the Framework)
GLA	- Greater London Authority
JV	- Joint Venture
LBTH	- London Borough of Tower Hamlets
LDF	- Local Development Framework
London Plan	- The London Plan 2011
p.	- Page
para	- Paragraph
£1m	- £1,000,000
NPPF	- National Planning Policy Framework (the Framework)
OHP	- Overheads and Profit
PoE	- Proof/s of Evidence
PPS	- Planning Policy Statement
psf	- per sq.ft. as in £500psf
PTAL	- Public Transport Accessibility Level
RSL	- Registered Social Landlord
S38(6)	- Section 38(6) of the Planning and Compulsory Purchase Act 2004
S106	- Section 106 of the Town and Country Planning Act 1990
SC	- Suggested Condition
SEL	- Strategic Employment Location
SHG	- Social Housing Grant
SME	- Small and Medium Sized Enterprises
SoCG	- Statement of Common Ground (Document CD/F/01)
SPG	- Supplementary Planning Guidance
sqm	- Square metres
TfL	- Transport for London
WSG	- Workspace Group PLC

## Appendix B

### SUGGESTED PLANNING CONDITIONS

- 1 The development allowed by this permission must begin within three years from the date of this decision.

REASON: To ensure planning permissions are implemented within a reasonable time period in accordance with Section 91 of the Town and Country Planning Act 1990.

- 2 Details of the construction phasing plan shall be submitted to and approved in writing by the Local Planning Authority prior to commencement of any works on site. The phasing of the development shall be implemented in accordance with the approved construction phasing plans.

REASON: To ensure that the development is constructed in accordance with the proposed phasing plan and in the interest of the amenities of future occupiers of the development in accordance with policies: DM25 of the Managing Development Document 2013; and SP10 of the Core Strategy 2010.

- 3 Notwithstanding the plans hereby approved as set out in Condition 34, details and samples of all facing materials to buildings within each Phase, shall be submitted to and approved in writing by the Local Planning Authority prior to any superstructure works to the phase which it relates to is commenced on site. The samples and details shall include:

Brickwork (including brick panels and mortar courses for each building);

Cladding materials;

Colour render panels;

window treatment (including sections and reveals; obscure glazing details to Block C1);

balustrading treatment (including sections);

louvers/timber treatment to refuse enclosures;

any other materials to be used.

The development shall be carried out strictly in accordance with the details so approved and maintained as such thereafter.

REASON: In the interest of securing sustainable development and to ensure that the resulting appearance and construction of the development is of a high standard in accordance with policies: DM24 of Management Development DPD 2013; and SP10 of Core Strategy 2010.

- 4 No development shall commence until a scheme to prevent the infiltration of surface water drainage into the ground is submitted to, and approved in writing by, the Local Planning Authority. The development shall be carried out thereafter in accordance with the approved scheme unless otherwise agreed in writing by the Local Planning Authority.

REASON: To ensure any infiltration incorporated as part of the proposed sustainable drainage scheme is designed, constructed and maintained so that it poses a low risk of pollution to the shallow and deep aquifers throughout its lifetime.

- 5 No development shall commence unless and until the following assessment has been submitted to and approved in writing by the Local Planning Authority.

a) A preliminary risk assessment which has identified:

- i) all previous uses
- ii) potential contaminants associated with those uses
- iii) a conceptual model of the site indicating sources, pathway receptors
- iv) potentially unacceptable risks arising from contamination at the site

b) A Site investigation scheme, based on a) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.

c) The results of the site investigation and detailed risk assessment are referred to in b) and, based on these, an option appraisal and remediation

strategy giving full details of the remediation measures required is to be undertaken.

d) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in c) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

e) If, during development, contamination not previously identified is found to be present at the site then no further development shall be carried out until the developer has submitted and obtained written approval from the Local Planning Authority for, a remediation strategy detailing how this unsuspected contamination shall be dealt with. The remediation strategy shall be implemented as approved.

The development shall be carried out strictly in accordance with the investigation and any scheme of remedial works so approved and no change therefrom shall take place without the prior written consent of the Local Planning Authority.

REASON: To protect controlled waters by identifying any remedial works required and to safeguard the health and safety of future occupants as the site may be contaminated due to the previous uses in accordance with policy 5.21 of the London Plan 2011; and DM30 of the Managing Development Document 2013.

- 6 Prior to occupation of the development, a verification report demonstrating completion of the works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved, in writing, by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include any plan (a 'long term monitoring and maintenance plan') for longer-term monitoring of pollutant leakages, maintenance and arrangements for contingency action, as identified in the verification plan, and for the reporting of this to the Local Planning Authority. The long-term monitoring and maintenance plan shall be implemented as approved.

REASON: To protect controlled waters by ensuring any remedial works required are undertaken and to safeguard the health and safety of future



occupants as the site may be contaminated due to the previous uses in accordance with policy 5.21 of the London Plan 2011; and DM30 of the Managing Development Document 2013.

- 7 Piling or any other foundation designs using penetrative methods shall not be permitted other than with the written consent of the Local Planning Authority for each Phase of the development, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to groundwater. The development shall be carried out in accordance with the approved details.

REASON SC7: To ensure that the proposed development does not pose any risk to groundwater and do not create a pathway by which contamination can migrate and cause pollution.

- 8 No impact piling shall take place until a piling method statement (detailing the type of piling to be undertaken and the methodology by which such piling will be carried out, including measures to prevent and minimise the potential for damage to subsurface water or sewerage infrastructure, and the programme for the works) has been submitted to and approved in writing by the Local Planning Authority in consultation with relevant water or sewerage undertaker. Any piling must be undertaken in accordance with the terms of the approved piling method statement.

REASON SC8: The proposed works will be in close proximity to underground water and sewerage utility infrastructure. Piling has the potential to impact on local underground water and sewerage utility infrastructure.

- 9 Development shall not be commenced until Impact studies of the existing water supply infrastructure have been submitted to, and approved in writing by the Local Planning Authority (in consultation with Thames Water). The studies should determine the magnitude of any new additional capacity required in the system and a suitable connection point.

REASON: To ensure that the water supply infrastructure has sufficient capacity to cope with the additional demand.

- 10 No development shall commence until the Council (as local planning authority and the highway authority) has approved in writing a scheme of access improvements at the junction of the site access and Prestons Road and to the boundary of the site necessary to serve the development. The development shall not be occupied thereafter until the approved scheme has been completed and certified in writing as complete by or on behalf of the Council (as local planning authority and highway authority).

REASON: To ensure the improvement works are completed prior to the occupation of the development and to mitigate the future impacts of the proposed development on the existing road network, in accordance with policy DM23 of the Managing Development Document 2013.

- 11 A delivery and servicing plan (DSP) detailing servicing arrangements for each Phase including the exact location, times and frequency shall be submitted to and approved in writing by the Local Planning Authority prior to the first occupation the building within the Phase which it relates to. A final site wide delivery and servicing plan shall be submitted and approved in writing by the Local Planning Authority prior to the first occupation of the last Phase.

The development shall be operated strictly in accordance with the details so approved, shall be maintained as such thereafter and no change thereafter shall take place without the prior written consent of the Local Planning Authority.

REASON: To ensure that the resulting servicing arrangements are satisfactory in terms of their impact on the free-flow of traffic, highways safety implications and residential amenity to the future occupiers are safeguarded in accordance with policies: 6.11, 6.12, and 6.14 of the London Plan 2011 and policies: SP08 and SP09 of the Core Strategy Development Plan Document adopted September 2010; and DM20 and DM21 of the Managing Development Document 2013.

- 12 No development shall be commenced on each Phase unless and until details of a construction logistic plan (CLP) that rationalises construction traffic with the aim to avoid peak traffic periods on the road network and reduce the total number of trips made shall be submitted to and approved in writing by the Local Planning Authority.

The construction of the development shall be operated strictly in accordance

with the details so approved, shall be maintained thereafter and no change shall take place without the prior written consent of the Local Planning Authority.

REASON: To minimise traffic impacts on Transport for London's Road Network in accordance with policies: 6.11, 6.12 and 6.14 of the London Plan 2011 and policies: SP08 and SP09 of the Core Strategy Development Plan Document adopted September 2010; and DM21 of the Management Development Document 2013.

- 13 The car-parking spaces (including disabled and allocated affordable parking spaces), motorcycle spaces and cycle spaces as shown on drawing nos. PL-009 Revision A; PL-010 Revision A and PL-011A hereby approved shall be provided in each Phase prior to the first occupation of the buildings within each Phase which it relates to. The parking bays shall be appropriately line-marked and thereafter kept available for the parking of vehicles, motorcycles and bicycles at all times.

REASON: In the interest of ensuring the appropriate provision of parking is accordance with policy DM22 of the Managing Development Document 2013.

- 14 Notwithstanding the plans hereby approved as set out in Condition 34, the site wide details and location of:

a) 20% electric charging points and details of further 20% passive provision (on both the basement level and street level); and

b) at least one car club space

shall be submitted to and approved in writing by the Local Planning Authority prior to superstructure works commence on the first Phase of the development.

The details for each Phase shall be carried out strictly in accordance with the details so approved and maintained as such thereafter.

REASON: In the interest of promoting sustainable modes of transportation in accordance with policies: DM20 of the Managing Development Document 2013; and SP11 of the Core Strategy 2010.

- 15 A scheme detailing a site wide hard and soft landscaping which is to be implemented in parts at the practical completion of each Phase and which follows the principles of the landscape master plan with reference LS01 Revision 01 shall be submitted to and approved in writing by the Local Planning Authority and in consultation with the City Airport prior to superstructure works commencing on site. The detailed landscaping scheme shall include the following details:

Soft planting: including any grass and turf areas, trees, planters, shrub and herbaceous areas including details of species which would discourages large bird species at both ground level and roof levels;

topographical survey: including earthworks, ground finishes, top soiling with both conserved and imported topsoil(s), levels, drainage and fall in drain types;

hard landscaping: including ground surfaces, kerbs, edges, ridge and flexible pavings, unit paving, furniture, steps, 'visual thread' and if applicable synthetic surfaces for both ground level and roof terrace level;

children play area;

fences and walls;

any signage and information boards;

brown (biodiversity) roof;

green walls;

substation and transformers;

Cycle parking stands/enclosures; and

any other landscaping feature(s) forming part of the scheme.

All landscaping in accordance with the approved scheme shall be completed / planted during the first planting season following practical completion of the each Phase. The landscaping details to be approved shall have an on-going five year maintenance and watering provision. Following planting of any trees or shrubs which die within five years of completion of the development shall be

replaced with the same species or an approved alternative and to the satisfaction of the Local Planning Authority.

The development shall be carried out strictly in accordance with the details so approved and shall be maintained as such thereafter.

REASON: In the interest of biodiversity, sustainability, and to ensure that a satisfactory standard of visual amenity is provided and maintained in accordance with policies: 7.1, 7.2, 7.3, 7.4 and 7.5 of the London Plan 2011 and policies: SP04 and SP10 of the Core Strategy Development Plan Document adopted September 2010; and DM11 and DM24 of the Management Development Document 2013.

- 16 The details of site wide wayfinding information shall be submitted to and approved in writing by the Local Planning Authority prior to superstructure works commence on the first Phase of the development. The approved site wide wayfinding information and signage shall be installed and implemented within at each Phase in accordance with the approved details prior to the first occupation of the buildings of the phase it relates to.

REASON: To ensure that suitable wayfinding information is provided for the users and residents of the site for ease of access and permeability in accordance with policy 7.3 of the London Plan 2011 and policies: DM23 and DM24 of the Managing Development Document 2013; SP10 of the Core Strategy 2010.

- 17 Details of a site wide scheme of lighting shall be submitted to and approved in writing by the Local Planning Authority (in consultation with the City Airport) prior to superstructure works commencing on the first Phase of the development. The details shall include the location and full specification of all lamps; light levels/spill; lamps and support structures.

The approved lighting scheme shall be implemented at each Phase in accordance with the approved details prior the first occupation of the buildings of the phase it relates to.

REASON: To ensure that the development creates safe, secure environment and appropriate accessible environment in accordance; and to ensure that the lighting scheme does not cause confusion/distraction to pilots and thereby

impair the safety of aircraft operations at the Airport. This is in accordance with policy 7.3 of the London Plan 2011 and policies: DM23 and DM24 of the Managing Development Document 2013; SP10 of the Core Strategy.

- 18 Details for the provision of habitat including bat roost and swift boxes to be located on the brown (biodiversity) roofs and suitable locations elsewhere within each Phase with nutrient substrate supporting varied low density cover shall be submitted to and approved by the Local Planning Authority prior to any superstructure works to the phase which it relates to is commenced on site.

The development shall be carried out strictly in accordance with the details so approved and implemented within the first planting season following the practical completion of the building within each Phase which it relates to, and shall be maintained as such thereafter.

REASON: To ensure that the proposal enhances biodiversity and provide suitable habitat within the development in accordance with policies 5.3 and 5.11 of the London Plan 2011.

- 19 The 39 wheelchair / wheelchair adaptable units as shown on plans PL-W100; PL-W200; PL-W300; PL-W400; PL-W500; and PL-W600 hereby approved shall be provided in the buildings within each Phase prior to the first occupation of the building which it relates to.

REASON: To ensure provision of wheelchair accessible units as agreed; and provide appropriate choices and housing opportunities for wheelchair users and their families, in accordance with policy 3.8 of the London Plan 2011, policy SP02 of the Core Strategy Development Plan Document adopted September 2010.

- 20 The residential units hereby approved shall be constructed to the standards for Lifetime Homes Standards.

REASON: To ensure flexible, accessible and adaptable homes appropriate and changing needs, in accordance with policy 3.8 of the London Plan 2011.

- 21 Notwithstanding the plans hereby approved as set out in Condition 34, a scheme for sound insulation and noise control measures together with appropriate ventilation details to the residential dwellings within each Phase shall be submitted to and approved in writing by the Local Planning Authority prior to any superstructure works commence on the Phase in which it relates to. The sound insulation and noise control measures shall meet the requirements of the current noise attenuation regulations.

The sound insulation and noise control measures shall be carried out strictly in accordance with the details so approved, shall be implemented prior to the first occupation of the buildings in each Phase which it relates to and shall be maintained as such thereafter.

REASON: To secure an appropriate internal residential environment against noise from DLR and Airport activities in accordance with policies: SP03 of the Core Strategy adopted September 2010; and DM25 of the Managing Development Document 2013.

- 22 For any café/restaurant use ancillary to the uses hereby permitted, details of proposed flues / extraction systems for the unit shall be submitted to and approved in writing by the Local Planning Authority prior to superstructure works commencing on the relevant Phase.

Any filters and parts requiring cleaning or replacement shall be easily accessible.

The flue / extraction systems shall be installed strictly in accordance with the details so approved and shall be regularly maintained and cleaned as such thereafter.

REASON: In the interest of protecting future residential amenity and the appearance of the resulting buildings in accordance with policies 7.6 and 7.7 of the London Plan 2011 and policies: SP10 of Core Strategy Development Plan Document adopted September 2010.

- 23 The dedicated refuse and recycling enclosures within each Phase shall be provided prior to the first occupation of the building which it relates to.

The development shall be carried out strictly in accordance with the details so approved and shall be maintained as such thereafter.

REASON: To secure the necessary physical waste enclosures to support the development and to ensure that responsible waste management practices are adhered to in accordance with policy: 5.16 of the London Plan 2011 and policies: SP05 of the Core Strategy 2010.

- 24 Prior to first occupation of the residential units within each part of the development hereby approved, the applicant shall submit the Final Code for Sustainable Homes certificates relevant to that part of the development being completed to demonstrate the development achieves a "Level 4" rating which shall be verified by the awarding body.

The sustainable design and construction measures shall be implemented in accordance with the proposals made in the 'Sustainability Statement dated October 2011' and retained for so long as the development shall exist except to the extent approved in writing by the Local Planning Authority.

REASON: To ensure the highest levels of sustainable design and construction in accordance with policies 5.3 of the London Plan 2011.

- 25 Prior to first occupation of the non-residential units within each part of the development hereby approved, the applicant shall submit the Final BREEAM certificates relevant to that part of the development being completed to demonstrate the development achieves an "Excellent" rating which shall be verified by the awarding body.

The sustainable design and construction measures shall be implemented in accordance with the proposals made in the 'Sustainability Statement dated October 2011' and retained for so long as the development shall exist except to the extent approved in writing by the Local Planning Authority.

REASON: To ensure the highest levels of sustainable design and construction in accordance with policies 5.3 of the London Plan 2011.

- 26 Prior to first occupation of the development hereby approved, the heat network supplying all spaces within the proposed development shall be installed and sized to the space heating and hot water requirements of the development, and shall thereafter serve all spaces of the development.

It shall be supplied with heat from either:



a) An external district heating system; or

b) Heat generating plant installed in a single energy centre located within the Poplar Business Park Development and that upon completion of the scheme includes combined heat and power capacity of ~100 kW<sub>e</sub>.

The heat generating plant will be designed to allow future connection to a future district heating scheme.

The energy efficiency and decentralised energy technologies shall be implemented in accordance with the proposals made in the 'Energy Strategy dated October 2011' and retained for so long as the development shall exist unless otherwise approved in writing by the local planning authority.

REASON: To ensure a reduction of carbon dioxide emissions in accordance with Policies 5.2 and 5.6 London Plan 2011 which seek to decentralise energy in development proposals.

- 27 A minimum of 300m<sup>2</sup> of photovoltaic panels (30kW<sub>p</sub>) shall be installed within the development hereby permitted. The renewable energy technologies shall be implemented in accordance with the proposals made in the 'Energy Strategy dated October 2011' and retained for so long as the development shall exist.

REASON: To ensure a reduction in carbon dioxide emissions in accordance with policies 5.7 of the London Plan 2011 and SP11 Core Strategy Development Plan Document adopted September 2010, which seek to secure the incorporation of renewable energy generating technologies into new development.

- 28 No development shall take place until the applicant has secured the implementation of a programme of archaeological works, in accordance with a written scheme of investigation which has been submitted to and approved in writing by the Local Planning Authority.

The detailed proposals shall be in the form of an archaeological project design in accordance with the appropriate English Heritage Guidelines.

REASON: The development of this site is likely to damage historic assets of archaeological interest in accordance with the National Planning Policy

Framework and policies: 7.8 of the London Plan 2011; SP10 of Core Strategy; CON4 of IPG 2007 and DM27 of the Managing Development Document 2013.

- 29 Details of cranes and/or scaffolding at a higher elevation than the proposed development in each Phase shall be submitted to and approved in writing by the Local Planning Authority (in consultation with London City Airport) prior to superstructure works commencing on each Phase.

REASON: In the interest of aerodrome safeguarding.

- 30 The highest part of the completed structure shall not exceed 76.64m AOD.

REASON: In the interest of aerodrome safeguarding.

- 31 Any building and engineering works preparatory to or ancillary to the construction shall take place between the hours of 8:00am and 6:00pm Mondays to Fridays and between the hours of 8:00am and 1:00pm Saturdays only. Any hammer driven piling or impact breaking out of materials carried out in pursuance of this permission shall be carried out between the hours of 10am and 4pm Mondays to Fridays and shall not take place at any time on Saturdays, Sundays or Public Holidays.

REASON: To safeguard the amenity of adjacent residents and the area in general, in accordance with Policies: SP02 and SP03 of the Core Strategy 2010; and DM25 of the Managing Development Document 2013.

- 32 Prior to any demolition a survey to identify Black Redstarts within the site and a strategy for mitigating impacts thereon shall be submitted to the local planning authority for approval. No demolition shall take place between April to August (inclusive) for any phase without complying with the approved strategy.

REASON: In the interest of biodiversity and to ensure that the proposed development does not breach the Wildlife & Countryside Act.

- 33 A waste management plan for each Phase shall be submitted to and approved in writing by the Local Planning Authority prior to any superstructure works commence on the phase it relates to. Such plan shall detail waste and recycling generated from the development, sufficient provision to store waste and recycling and its pick up arrangements. The plan shall also detail ways to ensure that the refuse/recycling facilities do not provide source of food for wildlife and proper disposal of food wrappers and other rubbish at the site to be provided to prevent the attraction of birds.

The development shall be carried out strictly in accordance with the details and waste management strategy approved and maintained as such thereafter.

REASON: To secure the necessary physical waste enclosure to support the development; to ensure that responsible waste management practices are adhered to; and in the safety of aerodrome safeguarding in accordance with policies: SP05 of Core Strategy 2010 and DM14 of the Managing Development Document 2013.

- 34 The development hereby approved shall be carried out in accordance with the following approved plans:

SCH-302 REV B, PL-001, PL-002, EL-001, EL-002, EL-003, EL-004, PL-004, PL-005, PL-009A, PL-010A, PL-011A, PL-012A, PL-013A, PL-014A, PL-015A, PL-016A, PL-017A, PL-018A, PL-019A PL-020A, PL-021A, PL-022A, PL-023A, PL-024, PL-025, PL-026, PL-027, PL-028, PL-029, PL-030, PL-031, PL-032, PL-100A, PL-101A, PL-102A, PL-103A, PL-104, PL-105, PL-200, PL-201A, PL-202A, PL-203A, PL-204A, PL-205A, PL-206, PL-300A, PL-301A, PL-302, PL-303, PL-304, PL-305, EL-141, EL-142, EL-143, EL-144, EL-145, EL-146, EL-147, EL-148, SC-151, SC-152, SC-153, SC-154, SC-155, SC-156, SC-157, LS-01, LS-04, LS-05, LS-06, LS-07.

REASON: To comply with Section 70(1)(a) of the Town and Country Act 1990 as amended and the Reason for Grant and also for the avoidance of doubt and in the interest of proper planning.

- 35 The development of any part of the application site hereby permitted shall not be commenced until a written planning obligation under Section 106 Town and Country Planning Act 1990 has been entered into by the freehold owner of the application site (other than Docklands Light Railway Limited or its successors in title) binding the freehold to the obligations contained in the Planning Obligations dated 31 January 2013 and entered into by Workspace 13 Limited and the Royal Bank of Scotland plc and until such planning obligation has been completed and submitted to the local planning authority.

REASON: To ensure the provision of mitigating infrastructure and housing appropriate for the development are properly provided for.

**DOCUMENTS****Proofs of Evidence Document List****London Borough of Tower Hamlets**

<b>TH</b>	<b>INITIALS</b>	<b>PROOF (P), REBUTTAL (R) OR SUMMARY (S) OR UPDATED PROOF (UP)</b>	<b>DOCUMENT</b>	<b>APPENDICES</b>
TH	OPEN		Council's opening statement	
TH	CLOSE		Council's closing submissions	
TH	CB	P	Proof of Evidence of Chris Baldwin	<b>TH-CB-P-App A:</b> Private Residential Value Commentary <b>TH-CB-P-App B:</b> Development Appraisal, Option 1 (affordable rent only) <b>TH-CB-P-App C:</b> Development Appraisal, Option 2 (affordable and social rent) <b>TH-CB-P-App D:</b> Galliard Wharfside Point Article <b>TH-CB-P-App E:</b> Ground Floor Plan of the Proposed Scheme <b>TH-CB-P-App F:</b> Photographs

TH	INITIALS	PROOF (P), REBUTTAL (R) OR SUMMARY (S) OR UPDATED PROOF (UP)	DOCUMENT	APPENDICES
TH	CB	R	Rebuttal Proof of Evidence of Chris Baldwin	
				<b>TH-CB-R-App:</b> Mayoral CIL Inspector's Report
TH	JD	P	Proof of Evidence of Ms Jo Dowle	
				<b>TH-JD-P- App 1A:</b> 2011 Census Results, LBTH Research Briefing
				<b>TH-JD-P- App 1B:</b> English Indices of Deprivation 2010, A London Perspective
				<b>TH-JD-P- App 1C:</b> Paycheck 2010, GLA intelligence Update
				<b>TH-JD-P- App 2A:</b> Tower Hamlets Housing List, October 2012
				<b>TH-JD-P- App 2B:</b> Tower Hamlets Letting Policy, Band definitions
				<b>TH-JD-P- App 3A:</b> Affordable Housing scheme completions 2010 - 11
				<b>TH-JD-P- App 3B:</b> Affordable Housing scheme completions 2011 -

TH	INITIALS	PROOF (P), REBUTTAL (R) OR SUMMARY (S) OR UPDATED PROOF (UP)	DOCUMENT	APPENDICES
				12
				<b>TH-JD-P- App 4:</b> Shelter press release, October 2011
				<b>TH-JD-P- App 5:</b> LBTH Affordable and Social Rent levels
TH	JD	S	Summary Proof of Ms Jo Dowle	-
TH	BE	P	Proof of Evidence of Miss Beth Eite	
				<b>TH-BE-P-App 1:</b> Representations and Responses to Managing Development DPD. 8 <sup>th</sup> August 2012
				<b>TH-BE-P-App 2:</b> Affordable Rent Programme 2011 - 2015. 'An Analysis for the East London Partnership' by POD LLP
				<b>TH-BE-P-App 3:</b> The London Strategic Housing Land Availability Assessment and Housing Capacity Study 2009 by the Mayor of London
				<b>TH-BE-P-App 4:</b> London Borough of Tower Hamlets Annual Monitoring Report 2010/11

TH	INITIALS	PROOF (P), REBUTTAL (R) OR SUMMARY (S) OR UPDATED PROOF (UP)	DOCUMENT	APPENDICES
TH	BE	S	Summary Proof of Evidence of Miss Beth Eite	-
TH	BE	UP	Update to Proof of Evidence of Miss Beth Eite	
				<b>TH-BE-UP-App 1:</b> Inspector's Report Examination into Managing Development Local Plan
				<b>TH-BE-UP-App 2:</b> Main Modifications
				<b>TH/PI/1</b> LBTH post inquiry comments on LBTH Managing Development Document
TH	DG	P	Proof of Evidence of Dan Gregory	
				<b>TH-DG-P-App 1:</b> E-mail dated 20 November 2012 from Chris Baldwin (DJD) to Ian Martin (Gleeds). A breakdown of DJD's construction costs is attached to this e-mail.
				<b>TH-DG-P-App 2:</b> E-mail dated 22 January 2013 from Dan Gregory to Fleur Brunton. Table set out in e-mail updated to include the percentage of commercial floorspace in each scheme.



**Workspace Group Plc**

<b>WS</b>	<b>INITIALS</b>	<b>APPENDIX (A), PROOF (P), REBUTTAL (R) OR SUMMARY (S)</b>	<b>DOCUMENT</b>	<b>APPENDICES</b>
WS	OPEN		Appellant's opening statement	
WS	CLOSE		Appellant's closing submissions	
WS	JC	P	Proof of Evidence of James Carr	-
WS	JC	S	Summary Proof of Evidence of James Carr	-
WS	JC	P	Proof of Evidence of Julian Carter	
				<b>WS-JC-P-App 1:</b> Appeal Decision in relation to Land North of St Edmund's Terrace, London (Oct 2012)
				<b>WS-JC-P-App 2:</b> Ministerial Statement on Housing and Growth (Sept 2012)
				<b>WS-JC-P-App 3:</b> Greater London Authority (GLA) response to the London Borough of Tower Hamlets Development

WS	INITIALS	APPENDIX (A), PROOF (P), REBUTTAL (R) OR SUMMARY (S)	DOCUMENT	APPENDICES
				Management Development Plan Document Consultation
				<b>WS-JC-P-App 4:</b> Tower Hamlets Community Plan 2011
				<b>WS/PI/1</b> WSG post inquiry comments on LBTH Managing Development Document 2013
WS	JC	S	Summary Proof of Evidence of Julian Carter	-
WS	JC	R	Rebuttal Proof of Evidence of Julian Carter	-
WS	DC	P	Proof of Evidence of David Carkeek	
WS	DC	R	Rebuttal Proof of Evidence of David Carkeek	-
				<b>WS-DC-R-App A:</b> Gleeds Drainage Assumed Outline Provision (£400K)
				<b>WS-DC-R-App B:</b> Gleeds Analysis of DJD Cost Information 20 <sup>th</sup> November

WS	INITIALS	APPENDIX (A), PROOF (P), REBUTTAL (R) OR SUMMARY (S)	DOCUMENT	APPENDICES
				2012 and Gleeds Feasibility Estimate 04 <sup>th</sup> October 2012
				<b>WS-DC-R-App C:</b> Workspace Group plc B1 Office Fit Out Cost Information
WS	JK	P	Proof of Evidence of Jacob Kut	<b>WS-JK-P-App 1:</b> June Article - RICS Guidance <b>WS-JK-P-App 2:</b> Tenancy Schedule <b>WS-JK-P-App 3:</b> GVA Economic Overview, Market Commentary and Forecasts <b>WS-JK-P-App 4:</b> Housing Market Commentary <b>WS-JK-P-App 5:</b> Comparable schemes and Development Pipeline <b>WS-JK-P-App 6:</b> Savills advice to Workspace Group plc <b>WS-JK-P-App 7:</b> Valuation print out - Current Use Value <b>WS-JK-P-App 8:</b> CBRE Valuations

WS	INITIALS	APPENDIX (A), PROOF (P), REBUTTAL (R) OR SUMMARY (S)	DOCUMENT	APPENDICES
				<b>WS-JK-P-App 9:</b> Gleeds Build Costs
				<b>WS-JK-P-App 10:</b> Appraisal & Cashflow - 35% Target Scheme
				<b>WS-JK-P-App 11:</b> Viability Appraisal outturn
				<b>WS-JK-P-App 12:</b> Extract from pod Report for LBTH
				<b>WS-JK-P-App 13:</b> Definitions and Reservations for Valuations
				<b>WS-JK-P-App 14:</b> Appeal Decision APP/X0360/A/12/2179141, Land at the Manor, Shinfield, Reading RG2 9BX
				<b>WS-JK-P-App 15A:</b> Streamlight Tower Brochure (black cover)
				<b>WS-JK-P-App 15B:</b> Streamlight Tower Specification (white cover)
				<b>WS-JK-P-App 16:</b> Housebuilder letters referred to at para 44 of Appeal Decision APP/X0360/A/12/2179141
WS	JK	S	Summary Proof of Evidence of Jacob Kut	-

WS	INITIALS	APPENDIX (A), PROOF (P), REBUTTAL (R) OR SUMMARY (S)	DOCUMENT	APPENDICES
WS	JK	R	Rebuttal of Evidence of Jacob Kut	
				<b>WS-JK-R-App 1:</b> Photographs
				<b>WS-JK-R-App 2:</b> Analysis of preliminaries, overheads and profit
				<b>WS-JK-R-App 3:</b> Appraisals - Scenarios 1, 2, 3 & 4

### Written Representations

Document    WR/YLC       Letters from Yoke Lin Cheah

Document    WR/EA       Letter from the Environment Agency

Document    WR/EM       e-mails from: Sirong Guan; Yang Song

## Core Document List

CD	Series	No.	Document	Date	How Submitted
CD	<b>A</b>	-	<b>Site Description &amp; Surrounding Area</b>		
CD	A	01	Site Location Plan PL001	October 2011	WS6
CD	<b>B</b>	-	<b>Application Documentation &amp; Related Information</b>		
CD	<b>B1</b>	-	<b>Application Submission</b>		
CD	B1	01	Planning Application Form	2011	WS1
CD	B1	02	Amendments to page 6 of Application Form		WS2
CD	B1	03	Covering Letter accompanying Planning Application Form	28 October 2011	WS3
CD	B1	04	Design and Access Statement - A3	October 2011	WS18
CD	B1	05	Planning Statement	October 2011	WS19
CD	B1	06	Sustainability Assessment	October 2011	WS27
CD	B1	07	Energy Strategy	October 2011	WS28
CD	B1	08	Statement of Community Involvement	October 2011	WS29

CD	Series	No.	Document	Date	How Submitted
CD	B1	09	Economic and Employment Study	October 2011	WS30
CD	B1	10	Framework Travel Plan	October 2011	WS31
CD	B1	11	Residential Travel Plan	October 2011	WS32
CD	B1	12	Environmental Statement: Non-Technical Summary	October 2011	WS20
CD	B1	13	Environmental Statement <ul style="list-style-type: none"> <li>• Volume 1</li> <li>• Volume 2</li> <li>• Volume 3</li> <li>• Volume 4A</li> <li>• Volume 4B</li> <li>• Volume 4C</li> </ul>	October 2011	WS21-WS26
CD	B1	14	Residential Schedule Breakdown Summary (SCH 302_Rev B)	8 July 2011	WS4
CD	B1	15	Commercial Phasing Area Schedule (Rev A (SCH 303))	8 August 2011	WS5
CD	B1	16	Existing Site Plans <ul style="list-style-type: none"> <li>• Existing Roof Plan - 1:250@A1 (PL-002)</li> <li>• Existing Elevation 1&amp;2 - 1:200@A1 (EL-001)</li> </ul>	October 2011	WS6

CD	Series	No.	Document	Date	How Submitted
			<ul style="list-style-type: none"> <li>Existing Elevations - Building A - Elevations 3&amp;4 - 1:200@A3 (EL-002)</li> <li>Existing Elevations - Building B - Elevations 5&amp;6 - 1:200@A3 (EL-003)</li> <li>Existing Elevations - Building C - Elevations 7&amp;8 - 1200@A3 (EL-004)</li> </ul>		
CD	B1	17	<p>Proposed Site Plans (Colour)</p> <ul style="list-style-type: none"> <li>Proposed Floor Plan - Key Plan - 1:1000@A3 (PL-003)</li> <li>Illustrative Ground Floor Plan with Landscape - 1:200@A0 (PL-004)</li> <li>Illustrative Roof Plan with Landscape - 1:200@A0 (PL-005)</li> </ul>	October 2011	WS7-WS9
CD	B1	18	<p>Proposed Block A Plans</p> <ul style="list-style-type: none"> <li>Block A - Ground - 3rd Floor Plans - 1:200@A1 - PL-100A</li> <li>Block A - 4th - 7th Floor Plans - 1:200@A1 - PL-101A</li> <li>Block A -8th- 11th Floor Plans - 1:200@A1 - PL-</li> </ul>	October 2011	<p>WS48</p> <p>WS48</p>



CD	Series	No.	Document	Date	How Submitted
			<p>102A</p> <ul style="list-style-type: none"> <li>Block A - 12th- 15th Floor Plans - 1:200@A1 - PL-103A</li> <li>Block A - 16th- 19th Floor Plans - 1:200@A1 - PL-104</li> <li>Block A - 20th- Roof Floor Plans - 1:200@A1 - PL-105</li> </ul>		<p>WS48</p> <p>WS48</p> <p>WS11</p> <p>WS11</p>
CD	B1	19	<p>Proposed Block B Plans</p> <ul style="list-style-type: none"> <li>Block B - Ground Floor Plan - 1:200@A1 - PL-200</li> <li>Block B - 1st Floor Plan - 1:200@A1 - PL-201A</li> <li>Block B - 2nd Floor Plan - 1:200@A1 - PL-202A</li> <li>Block B - 3rd - 4th Floor Plans - 1:200@A1 - PL-203A</li> <li>Block B - 5th - 8th Floor Plans - 1:200@A1 - PL-204A</li> <li>Block B - 9th - 12th Floor Plans - 1:200@A1 - PL-205A</li> <li>Block B - 13th floor - Roof</li> </ul>	October 2011	<p>WS12</p> <p>WS49</p> <p>WS49</p> <p>WS49</p> <p>WS49</p> <p>WS49</p>

<b>CD</b>	<b>Series</b>	<b>No.</b>	<b>Document</b>	<b>Date</b>	<b>How Submitted</b>
			Plans - 1:200@A1 - PL-206		WS12
CD	B1	20	Proposed Block C Plans <ul style="list-style-type: none"> <li>• Block C - Ground Floor - 3rd Floor Plans- 1:200@A1 - PL-300A</li> <li>• Block C - 4th Floor - 7th Floor Plans- 1:200@A1 - PL-301A</li> <li>• Block C - 8th Floor - 11th Floor Plans- 1:200@A1 - PL-302</li> <li>• Block C - 12th Floor - 14th Floor Plans- 1:200@A1 - PL-303</li> <li>• Block C - 15th Floor - 17th Floor Plans- 1:200@A1 - PL-304</li> <li>• Block C - 18th Floor - Roof Plans- 1:200@A1 - PL-305</li> </ul>	October 2011	<p>WS50</p> <p>WS50</p> <p>WS13</p> <p>WS13</p> <p>WS13</p> <p>WS13</p>
CD	B1	21	Proposed Site Elevations <ul style="list-style-type: none"> <li>• Street Elevation 1 - North 1:200@A0 - EL-141</li> <li>• Street Elevation 2 - South 1:200@A0 - EL-142</li> <li>• Elevation 3 - Block A -</li> </ul>	October 2011	WS14

CD	Series	No.	Document	Date	How Submitted
			<p>West - 1:200@A1 - EL-143</p> <ul style="list-style-type: none"> <li>Elevation 4 - Block A - East - 1:200@A1 - EL-144</li> <li>Elevation 5 - Block B - West - 1:200@A1 - EL-145</li> <li>Elevation 6 - Block B - East - 1:200@A1 - EL-146</li> <li>Elevation 7 - Block C - West - 1:200@A1 - EL-147</li> <li>Elevation 8 - Block C - East - 1:200@A1 - EL-148</li> </ul>		
CD	B1	22	<p>Proposed Site Sections</p> <ul style="list-style-type: none"> <li>Site Section A:A - 1:200@A0 - SC-151</li> <li>Site Section B:B - 1:200@A0 - SC-152</li> <li>Site Section C:C - 1:200@A0 - SC-153</li> <li>Site Section D:D - 1:200@A1 - SC-154</li> <li>Site Section E:E -</li> </ul>	October 2011	WS15

CD	Series	No.	Document	Date	How Submitted
			1:200@A1 - SC-155  <ul style="list-style-type: none"> <li>• Site Section F:F - 1:200@A1 - SC-156</li> <li>• Site Section G:G - 1:200@A1 - SC-157</li> </ul>		
CD	B1	23	Proposed Landscaping Plans  <ul style="list-style-type: none"> <li>• Illustrative Landscape Masterplan - 1:250@A0 - LS-01</li> <li>• Illustrative Sections A:A &amp; B:B - 1:100@A0 - LS-04</li> <li>• Illustrative Sections C:C &amp; D:D - 1:100@A0 - LS-05</li> <li>• Illustrative Sections E:E - 1:100@A0 - LS-06</li> <li>• Illustrative Elevation A:A - 1:100@A0 - LS-07</li> </ul>	August 2011	WS16
CD	<b>B2</b>	-	<b>Additional Plans, Drawings and Documents</b>		
CD	B2	01	Flood Evacuation Plan		WS33
CD	B2	02	Development Programme		WS34
CD	B2	03	Phasing Plan - 1:250@A1		WS35

CD	Series	No.	Document	Date	How Submitted
CD	<b>B3</b>	-	<b>Revised Plans, Drawings and Documents</b>		
CD	B3	01	Residential Mix - Scene 1		WS36
CD	B3	02	Residential Mix - Scene 2		WS37
CD	B3	03	Revised Accommodation Schedule	09 February 2012	WS38
CD	B3	04	Key Plan 1: 1000@A3	October 2011	WS39
CD	B3	05	Revised Proposed Floor Plans <ul style="list-style-type: none"> <li>• Basement Floor Plan - 1:250@A1 - PL-009 A</li> <li>• Ground Floor Plan - 1:250@A1 - PL-010 A</li> <li>• 1st Floor Plan - 1:250@A1 - PL-011 A</li> <li>• 2nd Floor Plan - 1:250@A1 - PL-012 A</li> <li>• 3rd Floor Plan - 1:250@A1 - PL-013 A</li> <li>• 4th Floor Plan - 1:250@A1 - PL-014 A</li> <li>• 5th Floor Plan -</li> </ul>	October 2011	WS41

CD	Series	No.	Document	Date	How Submitted
			1:250@A1 - PL-015 A  <ul style="list-style-type: none"> <li>6th Floor Plan - 1:250@A1 - PL-016 A</li> <li>7th Floor Plan - 1:250@A1 - PL-017 A</li> <li>8th Floor Plan - 1:250@A1 - PL-018 A</li> <li>9th Floor Plan - 1:250@A1 - PL-019 A</li> <li>10th Floor Plan - 1:250@A1 - PL-020 A</li> <li>11th Floor Plan - 1:250@A1 - PL-021 A</li> <li>12th Floor Plan - 1:250@A1 - PL-022 A</li> <li>13th Floor Plan - 1:250@A1 - PL-023 A</li> <li>14th Floor Plan - 1:250@A1 - PL-024</li> <li>15th Floor Plan - 1:250@A1 - PL-025</li> <li>16th Floor Plan - 1:250@A1 - PL-026</li> <li>17th Floor Plan - 1:250@A1 - PL-027</li> </ul>		WS42

CD	Series	No.	Document	Date	How Submitted
			<ul style="list-style-type: none"> <li>• 18th Floor Plan - 1:250@A1 - PL-028</li> <li>• 19th Floor Plan - 1:250@A1 - PL-029</li> <li>• 20th Floor Plan - 1:250@A1 - PL-030</li> <li>• 21st Floor Plan - 1:250@A1 - PL-031</li> <li>• Roof Plan - 1:250@A1 - PL-032</li> </ul>		
CD	<b>B4</b>	-	<b>Additional Correspondence/Clarification of Issues</b>		
CD	B4	01	Draft S106 Agreement	24 February 2012	WS44
CD	B4	02	Viability Assessment by GVA	13 December 2011	WS47
CD	<b>C</b>	-	<b>Application Determination</b>		
CD	C	01	Mayor's Stage I Report	3 January 2011	AQ
CD	C	02	Committee Report	1 March	AQ

CD	Series	No.	Document	Date	How Submitted
				2012	
CD	C	03	Update to Committee Report	1 March 2012	AQ
CD	C	04	Minutes to 1 March Committee		AQ
CD	C	05	Committee Report	12 April 2012	AQ
CD	C	06	Update to Committee Report	12 April 2012	AQ
CD	C	07	Minutes to 12 April Committee		AQ
CD	C	08	Decision Notice (PA/11/03375)	11 June 2012	AQ
CD	C	09	Mayor's Stage II Report	6 June 2012	AQ
CD	<b>D</b>	-	<b>Development Plan Policy, Guidance, Monitoring &amp; Evidence Base</b>		
CD	<b>D1</b>	-	<b>Adopted Local Planning Policy</b>		
CD	D1	01	Unitary Development Plan	1998	AQ
CD	D1	02	Core Strategy	2010	AQ
CD	<b>D2</b>	-	<b>Adopted SPDs and planning</b>		



CD	Series	No.	Document	Date	How Submitted
			<b>guidance</b>		
CD	D2	01	Planning Obligations SPD	2012	PoE
CD	D2	02	Interim Planning Guidance Core Strategy and Development Control	2007	PoE
CD	D2	03	Interim Planning Guidance - Leaside Area Action Plan	2007	PoE
CD	<b>D3</b>	-	<b>Emerging Planning Policy</b>		
CD	D3	01	Managing Development DPD (Submission Version)	May 2012	AQ
CD	D3	02	Managing Development DPD (Post Examination Version)	September 2012	PoE
CD	D3	02A	Managing Development Document	April 2013	Post Inquiry
CD	<b>D4</b>	-	<b>Strategic Planning Policy</b>		
CD	D4	01	London Plan	2011	AQ
CD	D4	02	London Plan Revised Early Minor Alterations	June 2012	PoE
CD	<b>E</b>	-	<b>National Planning Policy &amp; Guidance and Ministerial Statements</b>		
CD	E	01	National Planning Policy Framework	March 2012	PoE

CD	Series	No.	Document	Date	How Submitted
CD	<b>F</b>	-	<b>Statement of Common Ground and Statements of Case</b>		
CD	F	01	Statement of Common Ground	August 2012	Rule 6
CD	F	02	Appellant's Statement of Case	August 2012	Rule 6
CD	F	03	Local Planning Authority's Statement of Case	August 2012	Rule 6
CD	<b>G</b>	-	<b>Viability</b>		
CD	G	01	Affordable Housing Viability Statement: Interim Draft for Poplar Business Park by BNP Paribas	February 2012	PoE
CD	G	02	Report on Poplar Business Park Affordable Rents by Pod LLP	May 2012	PoE
CD	G	03	RICS guidance note - Financial Viability in Planning	August 2012	PoE
CD	G	04	Guidance notes to GLA Development Control Toolkit	May 2011	PoE
CD	<b>H</b>	-	<b>Affordable Housing</b>		

CD	Series	No.	Document	Date	How Submitted
CD	H	01	HCA Good Practice Note: Investment and Planning Obligations: Responding to the Downturn	July 2009	PoE
CD	H	02	DCLG: Delivering Affordable Housing	2006	PoE
CD	H	03	HMG: Laying the Foundations - A Housing Strategy for England	November 2011	PoE
CD	I	-	<b>Section 106 Agreement</b>		
CD	I	01	Mayor's CIL charging schedule	April 2012	PoE
CD	I	02	Report on the examination of the draft mayoral community infrastructure levy charging schedule	January 2012	PoE
CD	J	-	<b>Additional Documents - January 2013</b>		
CD	J	01	Unilateral Undertaking setting out planning obligations except for affordable housing -		
CD	J	02	Unilateral Undertaking setting out planning obligations relating to affordable housing		
CD	J	03	Statement of Common Ground relating to the S106 Agreements & S106 Clarification Note		
CD	J	04	Inspector's Report on Examination into the Managing	17 December	Found at TH/BE/UP,

CD	Series	No.	Document	Date	How Submitted
			Development DPD	2012	Appx 1
CD	J	05	Main Modifications proposed by Inspector to the Managing Development DPD		Found at TH/BE/UP, Appx 2
CD	J	06	Costs and S106 Comparison Table		
CD	J	07	Planning Obligation dated 17 May 2013 + covering letter	2013	Following the Close of the Inquiry



## Department for Communities and Local Government

### **RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT**

**These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).**

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

#### **SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;**

The decision may be challenged by making an application to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

#### **Challenges under Section 288 of the TCP Act**

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application under this section must be made within six weeks from the date of the decision.

#### **SECTION 2: AWARDS OF COSTS**

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

#### **SECTION 3: INSPECTION OF DOCUMENTS**

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the report of the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.